127-216

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 205.

LOUIS D. DeSAUSSURE, PLAINTIFF IN ERROR,

vs.

PETER C. GAILLARD, TREASURER OF CHARLESTON COUNTY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED FEBRUARY 16, 1885.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, JULY 22, 1887.

1 THE UNITED STATES OF AMERICA:

LOUIS D. DE SAUSSURE
vs.
PETER C. GAILLARD, Treasurer of Charleston County.

The President of the United States to the Hon'l W. D. Simpson, chief justice, and the associate justices of the supreme court of the State of South Carolina, Greeting:

Because in the records & proceedings as also in the rendition of the judgment of a plea which is in the said supreme court of the State of South Carolina before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Louis D. De Saussure and Peter C. Gaillard, treasurer of Charleston county, wherein was drawn in question the validity of a statute of the State of South Carolina, or an authority exercised under it, on the ground of said statute being repugnant to the Constitution of the United States, and the decision was in favor of such its validity, a manifest error hath happened, to the great damage of the said Louis D. De Saussure, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and
2 openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record *of* proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to law and custom of the United States should be done.

Witness the Honorable M. R. Waite, Chief Justice of the said Supreme Court, the 10th day of Jan'y, in the year of our Lord one thousand eight hundred and eighty-five, and J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. of S. C.

Allowed by—
W. D. SIMPSON,
Chief Justice South Carolina.

[Stamped:] Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed Jan'y 12, 1885. Albert M. Boozee, clerk.

[Endorsed:] Louis D. De Saussure, plaintiff in error, *vs.* Peter C. Gaillard, treasurer of Charleston county, defendant in error. Writ of error *from* the Supreme Court of the United States *to* the supreme court of South Carolina.

[Stamped:] Supreme court of South Carolina. Clerk's office, Columbia, S. C. Filed Jan'y 12, 1885. Albert M. Boozee, clerk.

3 STATE OF SOUTH CAROLINA:

In the Supreme Court.

L. D. DE SAUSSURE

vs.

P. C. GAILLARD, County Treasurer Charleston County.

To the Honorable W. D. Simpson, chief justice of the supreme court of South Carolina:

The petition of Louis D. De Saussure shows that in a cause entitled as above, in which your petitioner was the plaintiff and P. C. Gaillard, county treasurer for Charleston county, was defendant, the plaintiff alleged that he was the owner and holder of certain bonds issued by the State of South Carolina and of all the coupons thereto annexed, including the coupon which matured on each, respectively, on the first day of January, 1882; that the said act under which said bonds were issued provided that said coupons should be received in payment of all taxes due the State during the year in which they matured; that the State of South Carolina, by an act entitled "An act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881," had prohibited

4 the county treasurers of said State from receiving the coupons of said bonds in payment of the taxes levied by the said act; that your petitioners claimed that the pledge that the coupons of the bonds held by your petitioner should be received in payment of all taxes due the State during the year in which they matured formed a part of the contract between the holders of the said bonds and the State, and that the act of the Legislature of South Carolina entitled An act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881, in so far as it prohibited the county treasurer- from receiving the coupons of said bonds in payment of taxes levied by said act, was repugnant to article 1, sec. 10, of the Constitution of the United States.

Your petitioner shows that on the — day of November, 1884, the supreme court of the said State, being the highest court of law and equity in said State in which a decision could be had in said suit, made a final decision in the cause; and your petitioner shows further that in the decision of the supreme court aforesaid, which is now of record, it appears that a decision in favor of the validity of the act,

5 which prohibited the county treasurers from receiving the coupons of the bonds held by your petitioner in payment of the tax as levied by said act was rendered against your petitioner.

Wherefore he prays for the allowance of a writ of error & such other process as may cause the same to be corrected by the Supreme Court of the United States.

BUIST & BUIST,
SIMONTON & BARKER,
SIMONS & SEIGLING,
LORD & INGLESBY,
T. M. MORDECAI,
Att'ys for Petitioners.

Allowed.

W. D. SIMPSON,
Chief Justice South Carolina.

Filed January 12th, 1885.

ALBERT M. BOOZEE,
Clerk of Supreme Court of South Carolina.

6 United States of America to Peter C. Gaillard, treasurer of Charleston county, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden in Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of South Carolina, wherein Louis D. De Saussure is plaintiff in error and you are defendant in error, to show cause, if any you have, why the judgment or decree rendered against the said plaintiff in error, as within said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honerable W. D. Simpson, chief justice of the supreme court of South Carolina, this — day of January, 1885.

W. D. SIMPSON,
Chief Justice of the Supreme Court of South Carolina.

(Endorsed:) I accept service. Ch. Richardson Miles, att'y gen'l of S. C. Filed January 12th, 1885. Albert M. Boozee, clerk of supreme court of S. C.

7 STATE OF SOUTH CAROLINA:

Know all men by these presents that I, Louis D. De Saussure, am held and firmly bound unto P. C. Gaillard, county treasurer of Charleston county, in the full and just sum of two hundred and fifty dollars, to be paid to the said party, his certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, jointly and severally by these presents.

Sealed with my seal and dated this — day of ——, in the year of our Lord one thousand eight hundred and eighty —.

Whereas lately at a supreme court of the State of South Carolina, in a suit depending in said court between Louis D. De Saussure, plaintiff, and P. C. Gaillard, county treasurer Charleston county, defendant, a decision was rendered against Louis D. De Saussure, plaintiff, and the said Louis D. De Saussure, plaintiff, having obtained a writ of error and filed a copy thereof in the clerk's

8 office of the said court to reverse the decision in the aforesaid suit, and a citation directed to the said P. C. Gaillard, county treasurer of Charleston county, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the — Monday of —— next:

Now, the condition of the above obligation is such that if the said plaintiff in error shall prosecute the said writ of error to effect and

answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

LOUIS D. DE SAUSSURE. [L. S.]

Sealed and delivered in presence of—
L. LORD.

Approved.
W. D. SIMPSON,
Chief Justice So. Car.

Filed January 12th, 1885.

ALBERT M. BOOZEE,
Clerk of Supreme Court of South Carolina.

9 Record and proceedings of the supreme court of South Carolina, as follows:

At a supreme court begun & held for the State of South Carolina at the April term of 1884 of said court—present and presiding the Honorable W. D. Simpson, chief justice, and Henry McIver and Samuel McGowan, associate justices, of said court—the following proceedings were had upon the transcript of the record from the court of common pleas for the county of Charleston, in the first circuit of said State, in the case of Louis D. De Saussure, plaintiff, against P. C. Gaillard, treasurer of Charleston county, defendant, which transcript is in the words following, to wit:

10 *Summons for Relief.*

THE STATE OF SOUTH CAROLINA, *County of Charleston:*

Court of Common Pleas.

LOUIS D. DE SAUSSURE, Plaintiff,
against
PETER C. GAILLARD, Treasurer of Charleston County, Defendant.

To the defendant, Peter C. Gaillard, treasurer of Charleston county:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 30 Broad street, Charleston, S. C., within twenty days after the service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid the plaintiff in this action will apply to the court for the relief demanded in the complaint.

BUIST & BUIST,
SIMONS & SIEGLING,
SIMONTON & BARKER,
LORD & INGLESBY,
T. M. MORDECAI,
Plaintiff's Attorneys.

C. A. SEWARD, *Of Counsel.*

Dated January 3d, A. D. 1883.
[SEAL.]

W. W. SALE,
C. C. P. and G. S.

Filed January 3d, 1883.
A—115. Received January 3, 1883.

HUGH FERGUSON, *S. C. C.*

11 *Complaint.*

THE STATE OF SOUTH CAROLINA, *County of Charleston:*

In the Court of Common Pleas.

LOUIS D. DE SAUSSURE, Plaintiff,
against
PETER C. GAILLARD, Treasurer of Charleston County, Defendant.

Trial to take place in the county of Charleston.

To the court of common pleas of the first circuit:

The plaintiff above named, complaining of the defendant, alleges—

I. That in and by an act of the General Assembly of the State of South Carolina, approved 22d December, 1873, entitled "An act to reduce the volume of the public debt, and provide for the payment of the same," the treasurer of the said State was authorized and directed to receive from the holders of certain classes of bonds and stocks of the State of South Carolina, particularly specified and enumerated in the said act, and the coupons and interest orders of said bonds and stocks which had accrued and would accrue prior to the first day of January, 1874, who might be willing to surrender the same, and was authorized and directed, in exchange for and in lieu of such bonds, stocks, coupons, or interest orders, to issue to the holders thereof the other coupon bonds or certificates of stock in said act provided for as such holders might desire, equal in amount to fifty per centum of the face value of the bonds, stocks, coupons, or interest orders so surrendered.

That said act prescribed the manner in which such bonds and certificates of stock were to be issued, the form of exe-
12 cution, and certain contracts providing for the levy of an annual tax to be levied upon the taxable property of the State to pay the interest on said bonds and certificates of stock, and to provide for the redemption thereof, and also other provisions tending to enhance the value of the same; and in the fifth section thereof it was provided "that the said bonds and stocks shall bear interest at the rate of six per cent. per annum, payable semi-annually at the State treasury and at such place in the city of New York as shall be designated by the financial board of the State on the first days of January and July in each year, and shall be of such denominations as may be most convenient, but of uniform design and appearance, and shall be payable within twenty years from the passage of this act and shall be dated the first day of January, 1874, and the first coupon shall fall due July 1st, 1874, and all coupons upon the bonds and interest orders of said certificates of stock

herein authorized to be issued shall be received in payment of all taxes due the State during the year in which they mature, except for the tax levied for the public schools, and the said coupon bonds and stocks shall at all times be exchangeable, the one for the other, upon application to the State treasurer," and the faith, funds, and credit of the State were solemnly pledged for the punctual payment of the interest and final redemption of the principal of the said bonds and stocks and for providing a surplus fund for that purpose.

II. That under the provisions of the said act the State treasurer, on the thirteenth day of October, 1875, received from Levy & Borg bonds and coupons enumerated in the said act, and which he was authorized and directed to receive, amounting in the aggregate to fifty-two thousand two hundred and ten dollars, and issued in exchange therefor fifty-two bonds, each of five hundred dollars, and one certificate of stock, number 686, for one hundred and five dollars, of the bonds and stocks in said act provided, being fifty per centum of the face value of the bonds and coupons so surrendered by them as aforesaid.

13 III. That among the bonds so issued to the said Levy & Borg were bonds designated by the numbers 850 and 851, for five hundred dollars each.

IV. That under the provisions of the said act the State treasurer, on the nineteenth day of May, 1875, received from the Yonkers Savings Bank bonds and coupons enumerated in the said act, and which he was authorized and directed to receive, amounting in the aggregate to two hundred and thirty-seven thousand five hundred and thirty dollars, and issued in exchange therefor one hundred and eighteen bonds, each of one thousand dollars, one bond of five hundred dollars, and one certificate of stock, number 496, for two hundred and sixty-five dollars, of the bonds and stocks in said act provided, being fifty per centum of the face value of the bonds and coupons so surrendered by them as aforesaid.

V. That among the bonds so issued to the said Yonkers Savings Bank was the bond designated by the number 2290, for one thousand dollars.

VI. That in and by the said bonds it was, among others, stated that the State of South Carolina promises to pay to the bearers the sums of five hundred dollars and one thousand dollars, respectively, on the first day of July, 1893, with interest at the rate of six per cent. per annum, payable semi-annually on the first of January and July of each year in the cities of New York and Columbia, South Carolina, on the presentation of the proper coupons thereto annexed bearing the signature of the State treaurer, said coupons being receivable in payment of all taxes due the State during the year in which they mature except for the tax levied for the public schools, the words following being endorsed on each of the said bonds, to wit: "The payment of the interest and the redemption of the principal of this bond is secured by the levy of an annual tax of two mills upon the entire taxable property of the State. The faith,

credit, and funds of the State are hereby solemnly pledged
14 for the punctual payment of the interest and redemption of the principal of this bond by the act of General Assembly approved December 22d, 1873."

VII. That each and every coupon attached to each of the said bonds is signed in the name of F. L. Cardozo, treasurer, and is in the words and figures following—that is to say:

$15. Coupon No. 16.

The State of South Carolina promises to pay to bearer in the city of New York, or Columbia, South Carolina, fifteen dollars, being six months' interest, due 1st January, 1882, on consolidation bond No. 850.

$15. Coupon No. 16.

The State of South Carolina promises to pay to bearer in the city of New York or Columbia, South Carolina, fifteen dollars, being six months' interest, due 1st January, 1882, on consolidation bond No. 851.

$30. Coupon No. 16.

The State of South Carolina promises to pay to bearer in the city of New York or Columbia, South Carolina, thirty dollars, being six months' interest, due 1st January, 1882, on consolidation bond No. 2290.

And upon each and every of said coupons is the following endorsement:

"State of South Carolina. Receivable in payment of all taxes except school tax."

VIII. That some time in the year 1878 the plaintiff, for value, became the owner and holder of the said three bonds and of all the coupons thereto annexed, including the coupon which matured on each, respectively, on the first day of January, 1882.

15 IX. That, notwithstanding the contract of the State expressed in the act approved the twenty-second day of December, 1873, and recited in said consolidation bonds, the State of South Carolina, by an act entitled "An act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881," has prohibited the county treasurers of said State from receiving the coupons of said bonds in payment of the taxes levied by the said act; that the plaintiff is advised and so charges that the said act is repugnant to article I, section 10, of the Constitution of the United States.

X. That the defendant, Peter C. Gaillard, is the duly appointed county treasurer for Charleston county and has duly qualified and is acting as such county treasurer; and it is the duty of the said county treasurer to collect and receive all taxes which are due to the said State of South Carolina upon the property situate in the county of Charleston.

XI. That the plaintiff is the owner of property in Charleston county upon which taxes were levied under the provisions of said act to raise supplies for the fiscal year commencing November 1st, 1881, aggregating the sum of one hundred and fifty-three $\frac{86}{100}$ dollars, of which said sum twenty-nine $\frac{34}{100}$ dollars were levied by the said act for the public schools; all of which will appear by reference to the tax tag furnished to the plaintiff by the said county treasurer, a copy of which is hereto annexed, marked Exhibit "A."

XII. That on the eighteenth day of December, 1882, the plaintiff tendered to the said defendant, Peter C. Gaillard, as county treasurer aforesaid, in payment of said taxes, costs, and penalties, one hundred and thirty-one $\frac{97}{100}$ dollars in cash and the remainder, to wit, sixty dollars, in the said coupons of said consolidated bonds numbers 850, 851, and 2290, which matured on the first day of January, 1882; that the said Peter C. Gaillard wrongfully and illegally refused to receive the said coupons, and assigned as a reason
16 therefor that he was forbidden so to receive the same by the provisions of said act of November 1st, 1881, and the plaintiff thereupon paid to the said defendant, under protest, the sum of one hundred and ninety-one $\frac{97}{100}$ dollars in legal tender notes of the United States, in pursuance of the provisions of an act of the General Assembly of said State, approved the twenty-fourth day of December, 1878, entitled "An act to facilitate the collection of taxes."

Wherefore the plaintiff demands judgment. That it be adjudged that the amount of sixty dollars in United States currency paid by the plaintiff to the defendant on the eighteenth day of December, 1882, was wrongfully and illegally collected and ought to be refunded, and that a certificate of record thereof be issued accordingly to the plaintiff; that he have such further relief in the premises as the nature of the case may require and to the court may seem meet and proper.

BUIST & BUIST,
SIMONS & SIEGLING,
SIMONTON & BARKER,
LORD & INGLESBY,
T. M. MORDECAI,
Plaintiff's Attorneys.

C. A. SEWARD, *Of Counsel.*

THE STATE OF SOUTH CAROLINA, *County of Charleston:*

Louis D. De Saussure, the plaintiff above named, being duly sworn, says that the foregoing complaint is true to his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

LOUIS D. DE SAUSSURE.

Sworn to before me this third day of January, 1883.

P. EDWIN GREGORY,
Notary Public S. C.

17 EXHIBIT A.

Charleston County—State Taxes, 1881.

Louis De Saussure.

District—City.

Number of acres	
Number of buildings	1
Number of lots	1
Assessments:	
Real estate	12,800
Personal property	1,870
Total	14,670
State tax, 4¾ mills	68 68
Penalty on State tax	9 30
County tax, 2¾ mills	39 34
Special county tax, 1⅛ mills	16 50
School tax, 2 mills	29 34
Penalty on all county taxes	12 78
Poll tax	1 15
Five per cent. penalty on first instalment	3 93
Treasurer's costs	10 95
Advertising	
Total tax	191 97

Paid —— —, 188–.
Receipt No. — book—.
Filed January 3d, 1883.

18 *Answer.*

THE STATE OF SOUTH CAROLINA, *County of Charleston:*

In the Common Pleas.

LOUIS D. DE SAUSSURE, Plaintiff,
against
PETER C. GAILLARD, Treasurer of Charleston County, Defendant.

Peter C. Gaillard, county treasurer of Charleston county, the defendant above named, answering the complaint herein, says—

I. That he admits it to be true, as stated in paragraph I of said complaint, that the General Assembly of the State of South Carolina passed an act entitled "An act to reduce the volume of the public debt and provide for the payment of the same," approved December 22, 1873, which act is known as the "consolidation act."

II. Defendant, further answering, alleges that subsequent to the passage of said act the General Assembly of the said State, by a "Joint resolution to raise a commission to investigate the indebted-

ness of the State," approved June 8, 1877, provided a commission to make a complete and thorough investigation of the entire amount of consolidated bonds and certificates of stock which had been
19 issued under the "consolidation act" aforesaid, and of the bonds, coupons, and certificates of stock which had been surrendered to the State treasurer in exchange for the consolidated bonds and certificates of stock issued under said act, and to report to the General Assembly any illegality or non-conformity to law in the issue of consolidated bonds and certificates of stock, and the grounds of the same, which commission is known as the "bond commission."

That the said commission made a report to the General Assembly of the result of the investigation made by them under the joint resolution aforesaid, with schedules annexed showing the different classes of bonds and certificates of stock which had been surrendered in exchange for consolidated bonds and certificates of stock, Schedule 6 showing the consolidated bonds and certificates of stock which, in the judgment of the said commission, were not issued in accordance with law and were not authorized to be consolidated under the "consolidation act."

And thereupon the General Assembly, by a "Joint resolution providing a mode of ascertaining the debt of the State and of liquidating the same," approved March 22, 1878, created a special court, known as the "court of claims," to hear and determine any case or cases made up or brought to test the validity of any of the consolidated bonds or certificates of stock or of any of the various classes of bonds or certificates of stock mentioned in the said report of the "bond commission" as not issued in accordance with law.

It was further provided by the joint resolution aforesaid that there should be the same right of appeal from the said "court of claims" to the supreme court of South Carolina as from the circuit courts of the said State, and with a right of appeal by writ of error or otherwise as provided by law to the Supreme Court of the United States.

That said special court should have the same right to enter judgment, issue execution, punish for contempt, and enforce its mandates as was then possessed by the circuit courts of the State of South Carolina.

That the State should be represented in the said special
20 court by the attorney general and two associate counsel to be selected by the joint vote of the General Assembly.

That the attorney general and his associates, with the consent of the creditors of the State, or so many of them as shall be necessary, might make up a case or cases to be heard and determined in said court, in which, if practicable, the State should be the defendant, to test the validity of the said consolidated bonds, coupons, and certificates of stock mentioned in Schedule 6 of the report of the "bond commission," bringing before the court the various classes of vouchers which it is stated in the said report impair the validity of the said consolidated bonds, coupons, or certificates of stock or any of them.

The said joint resolution further provided for the levy for the current year of a tax sufficient to pay the coupons and interest orders maturing on the outstanding consolidated bonds and certificates of stock during the said fiscal year, the interest on the consolidated bonds and certificates of stock mentioned in Schedule 5 of the report of the "bond commission" as subject to no valid objection to be paid, and the payment of the interest on the several classes of consolidated bonds and certificates of stock mentioned in Schedule 6 of said report whenever there should be a final adjudication as to the validity of the several classes of bonds and stocks in the manner therein provided and none other.

That in pursuance of the provisions of the said joint resolution actions in which the State of South Carolina was the defendant were, with the consent of the attorney general and his associates, brought in the said "court of claims" on coupons of the bonds of the various classes mentioned in Schedule 6 of the report of the "bond commission."

That after trial and hearing of the said causes the said "court of claims" rendered judgment in favor of the State.

From the judgments of the "court of claims" in these several cases appeals were taken to the supreme court of the State of South Carolina, as provided in the joint resolution establishing the said "court of claims."

That upon the hearing of the said appeals the supreme
21 court of the State of South Carolina, at the April term, 1879, in the cases entitled "G. M. Walker, cashier, appellant, *vs.* The State of South Carolina, respondent," and "F. J. Pelzer, appellant, *vs.* The State of South Carolina, respondent," decreed and adjudged—

First. That all the bonds issued under the "consolidation act" are valid obligations of the State of South Carolina except as follows:

1st. Such as were issued in exchange for bonds issued under the act entitled "An act to authorize a loan for the relief of the treasury," approved February 17, 1869, or for the coupons of such bonds, the said act being repugnant to section 7, article IX, of the constitution of the State of South Carolina, in that it purports to create a debt which was not "for the purpose of defraying extraordinary expenditures" and the debt sought to be created not being "for some single object" and such object not being "distinctly specified therein," as required by the said section and article of the constitution.

2nd. Such as were issued in exchange for the second issue of bonds under an act entitled "An act to authorize a State loan to pay interest on the public debt," and which were endorsed "issued under act approved August 26, 1868," or the coupons of such bonds, the said bonds and coupons being absolutely void, even in the hands of *bona fide* holders, because issued without any authority whatever.

3rd. Such as were issued in exchange for those conversion bonds which were issued in exchange for either of the bonds or coupons of the two classes mentioned.

Second. That if any consolidated bond rests wholly upon any of

the three objectionable classes of bonds therein mentioned, then it is wholly void; but if it rests only in part upon such objectionable bonds and coupons, then it is void only to the extent which it does rest upon such objectionable bonds or coupons, and for the balance it is a valid obligation of the State.

22 Third. That the burden of proof is upon the State to show that any particular bond which may be brought into question does rest either in whole or in part upon such objectionable bonds and coupons, and if in part only, then the State must show what part is so affected.

III. Defendant further alleges that by an act entitled "An act to provide for the settlement of the consolidated debt of the State in accordance with the decision of the supreme court of the State of South Carolina," approved December 23, 1879, after reciting the legislation and the decision of the supreme court of the State of South Carolina in relation to the consolidated debt of the State hereinbefore set forth, and that it is to the interest of the State and her creditors that the principles established in the said decision of the supreme court should be accepted as final and forthwith applied in the elimination from the consolidated debt of the State of all invalid material, a special commissioner was appointed to ascertain and establish the exact percentage and amount of the invalidity of each and every consolidated bond and certificate of stock of the State consolidated debt and of the interest thereon in accordance with the principles laid down in the said decision of the supreme court of the State.

And it was therein further provided that the said special commissioner should, at least once in each month during the period of said ascertainment, make a detailed report to the state treasurer setting forth therein by their numbers the consolidated bonds, coupons, certificates of stock, and interest orders investigated by him during the previous month; also whether the same, under the decision of the supreme court aforesaid, be wholly valid or only partially valid, and where only partially valid in each case he should also set forth the exact percentage, amount, and character of the invalidity; that he should continue to make such detailed reports to the State treasurer until he should have investigated and reported upon the entire consolidated debt of the State.

23 It was further therein provided that every holder of any consolidated bond or certificate of stock or of the interest thereon reported by said special commissioner as partially invalid shall have the right to surrender to the State treasurer for cancellation such bonds, certificates of stock, and interest; and upon such surrender and cancellation he shall be entitled to receive from the State treasurer, who is authorized and required to issue the same, a new bond or certificate of stock equal in amount to the exact amount of the valid portion of such bond, certificate of stock, coupon, or interest order; such new bonds and certificates of stock to be in all respects similar and of like validity to and having the same benefits and privileges as those provided for in the "consolidation act," approved 22d December, 1873, saving and except that the first cou-

pon or interest to mature thereon shall mature on the 1st of January, 1879, and the same rights and privileges are likewise given to the holders of detached coupons and interest orders.

And it was further thereby declared "that the bonds and stocks reported by the special commissioner as valid, and the portions of the bonds and stocks also reported by him as valid, but exchanged by their holders, as hereinbefore provided, for new consolidated bonds or stocks, are hereby declared to be valid and unquestioned obligations of the State." (And the bonds and stocks so declared to be unquestionable obligations of the State are designated and known as "brown consols.")

That the special commissioner appointed under the act aforesaid did perform the duties required of him by said act, and did make to the State treasurer from time to time the report of his investigations until he had investigated and reported upon the entire consolidated debt of the State, as required by the said act, which reports of the said special commissioner remain in the office of the State treasurer.

That by an act entitled "An act to extend the time for funding the unquestionable debt of the State," approved December 24,
24 1880, the comptroller general of the State is required to examine into the character and material of all consolidated bonds and certificates of stock of the State issued since the first day of January, 1866, together with the coupons and interest orders thereon, which may be presented to him for this purpose by the holders thereof, and to report to the State treasurer how the said bonds, certificates of stock, coupons, and interest orders are affected by the decision of the supreme court of the State hereinbefore stated and the exact percentage of invalidity in the material reported upon as established by the said decision.

And the State treasurer is authorized and required, in lieu of the bonds, stocks, coupons, and interest orders so surrendered, to issue consolidated bonds and certificates of stock for fifty per cent. of the face value of the valid material surrendered.

That the State has since provided for the levy of an annual tax upon the taxable property of the State and for the payment by the State treasurer, from the proceeds of said tax, of the interest on the entire consolidated debt of the State, ascertained and reported by the special commissioner aforesaid to be valid, in accordance with the decision of the supreme court aforesaid, and also upon such portions of the same as shall have been ascertained and reported by said special commissioner to be valid and justly due by the State as the same shall appear from the certificates of the said special commissioner filed in the office of the State treasurer.

That by joint resolution approved 9th February, 1882, it was resolved as follows:

"Whereas the consol bonds bear upon their face the contract of the State to receive the coupons of the same for taxes; and

"Whereas, from the fact that the green consols outstanding are more or less tainted with invalidity, varying with each security (which has been established by the courts and acquiesced in by the

holder), the coupons from this class of bonds cannot be re-
25 ceived by the tax collector, but can only be paid at the State treasury where access to the registry permits the amount of invalidity in each coupon to be ascertained: Now, therefore, in order to hasten the process now going on of the conversion of green consols into brown consols, which latter represent the unquestioned debt of the State, and the coupons from which are now being received in payment of taxes:

"Be it resolved, That on and after the first day of January, eighteen hundred and eighty-three, the interest upon the green consol bonds and stocks of the State shall not be paid at the treasury until said securities have been converted into brown consol bonds and stocks."

IV. Defendant, further answering paragraphs II and III of said complaint, admits that on the tenth day of October, 1875, the State treasurer received from Levy & Borg bonds and coupons of the classes enumerated in the "consolidation act," approved December 22, 1873, amounting in the aggregate to fifty-two thousand two hundred and ten ($52,210) dollars, and issued in exchange therefor fifty-two (52) consolidated bonds, each of five hundred ($500) dollars, and one certificate of consolidated stock for one hundred and five ($105) dollars, being fifty per cent. of the face value of the bonds and coupons so surrendered, as alleged in paragraph II of said complaint.

That among the consolidated bonds so issued to the said Levy & Borg were bonds designated by the numbers 850 and 851, which are in the form set forth in paragraph III of said complaint.

But this defendant, further answering, alleges that among the bonds and coupons so surrendered by the said Levy & Borg to the State treasurer, amounting in the aggregate to the sum of fifty-two thousand two hundred and ten ($52,210) dollars, were the following:

Certain bonds endorsed "issued under act approved August 26, 1868," being a second issue under "An act to
26 authorize a State loan to pay interest on the public debt," approved August 26, 1868, amounting in the aggregate to forty-two thousand dollars	$42,000
And coupons attached to the said bonds, amounting in the the aggregate to five thousand six hundred and seventy dollars	5,670
Amounting in all to	$47,670

As by reference to the consolidated bond and stock register, the reports of the "bond commission" appointed under the joint resolution of June 8, 1877, and the reports of the special commissioner appointed under the act of 24th December, 1879, in the office of the State treasurer will more fully appear.

A statement made from which, showing the bonds and coupons surrendered by, and of the bonds and certificate of stock issued to, the said Levy & Borg on the 10th day of October, 1875, made by John P. Richardson, State treasurer, is herewith filed as an exhibit, marked "Exhibit A."

That the bonds and coupons last aforesaid so surrendered by the said Levy & Borg were not, under the aforesaid decision of the supreme court of South Carolina, valid obligations of the State, but were null and void and did not constitute a good and valid consideration for the consolidated bonds and certificates of stock issued in exchange therefor and the consolidated bonds and stocks issued in exchange therefor, of which the bonds Nos. 850 and 851 mentioned in the complaint are two, are without consideration and void to the extent to which they rest upon such void bonds and coupons so surrendered.

V. Defendant, further answering paragraphs IV and V of said complaint, admits that on the nineteenth day of May, 1875, the State treasurer received from the Yonkers Savings Bank bonds and coupons of the classes enumerated in the "consolidation act," approved December 23, 1873, amounting in the aggregate to
27 two hundred and thirty-seven thousand five hundred and thirty ($237,530) dollars, and issued in exchange therefor one hundred and eighteen (118) consolidated bonds, each of one thousand ($1,000) dollars, one consolidated bond of five hundred ($500) dollars, and one certificate of consolidated stock for two hundred and sixty-five ($265) dollars, being fifty per cent. of the face value of the bonds and coupons so surrendered, as alleged in paragraph IV of said complaint, and that among the consolidated bonds so issued to the said Yonkers Savings Bank was the bond designated by the number 2290, for one thousand ($1,000) dollars, which is in the form set forth in paragraph V of said complaint.

But this defendant, further answering, alleges that among the bonds and coupons so surrendered by the Yonkers Savings Bank to the State Treasurer, amounting in the aggregate to two hundred and thirty-seven thousand five hundred and thirty ($237,530) dollars, were the following:

Certain bonds issued under "An act to authorize a loan for the relief of the treasury," approved February 17, 1869, amounting in the aggregate to one hundred and seventy thousand dollars	$170,000
And coupons attached to the said bonds, amounting in the aggregate to twenty-nine thousand seven hundred and fifty dollars	29,750
Detached coupons from bonds issued under the act last aforesaid, "for the relief of the treasury," amounting to nine hundred and eighty dollars	980
Amounting in all to	$200,730

As by reference to the consolidated bond and stock register, the reports of the "bond commission" appointed under the joint resolution of June 8, 1887, and the reports of the special commissioner appointed under the act of 24th December, 1879, in the office of the State treasurer will more fully appear.

A statement made from which, showing the bonds and
28 coupons surrendered by, and of the bonds and certificate of

stock issued to, the said Yonkers Savings Bank on the 19th day of May, 1875, made by John P. Richardson, State treasurer, is contained in the exhibit herewith filed, marked "Exhibit A."

That the bonds and coupons last aforesaid so surrendered by the Yonkers Savings Bank were not, under the aforesaid decision of the supreme court of South Carolina, valid obligations of the State, but were null and void, and did not constitute a good and valid consideration for the consolidated bonds and stocks issued in exchange therefor, and the consolidated bonds and stocks issued in exchange therefor, of which the bond No. 2290 mentioned in the complaint is one, are without consideration and void to the extent to which they rest upon such void bonds and coupons so surrendered.

VI. Defendant further alleges that the holders of the bonds Nos. 850, 851, and 2290 mentioned in the complaint did not bring the same before the special "court of claims," and that they have never surrendered the same to the commissioner or the comptroller general or the State treasurer to ascertain and establish the exact percentage and amount of the invalidity of the said bonds in accordance with the principles laid down in the decision of the supreme court of the State of South Carolina aforesaid, as provided by law, and have never received new consolidated bonds or certificates of stock equal in amount to the valid portions of said bonds, as provided by law, known as "brown consols."

VII. Defendant admits the allegations contained in paragraph VII of said complaint.

VIII. As regards the matters stated in paragraph VIII of the complaint defendant has no knowledge or information sufficient to form a belief, and can, therefore, neither admit nor deny the same, but demands that the plaintiff be put to strict proof of the allegations of said paragraph of the complaint.

29 IX. Defendant, answering paragraph IX of said complaint, says that the act entitled "An act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881," approved 9th February, 1882, provides that all taxes assessed and payable under the said act shall be paid in the following kinds of funds and no other: Gold and silver coin, United States currency, national bank notes, and coupons which shall become payable during the year 1882 on the valid consolidated bonds of the State known as "brown consols:" Provided, however, the jury certificates and the *per diem* of State witnesses in the circuit courts shall be received for county taxes, not including school taxes.

Defendant denies that said act is repugnant to article I, section 10, of the Constitution of the United States.

X. Defendant admits the allegations contained in paragraphs X, XI, and XII, except as to the allegation contained in paragraph XII that this defendant, as county treasurer of Charleston county, wrongfully and illegally refused to receive the coupons of consolidated bonds Nos. 850, 851, and 2290, tendered by plaintiff in payment of taxes, the said defendant, as county treasurer, having rightfully and legally refused to accept the same under the provisions of the act entitled "An act to raise supplies and make appropriations for the

fiscal year commencing November 1st, 1881," approved February 9, 1882.

Wherefore defendant demands that the said complaint be dismissed.

DE SAUSSURE & SON,
C. R. MILES, *Attorney General*,
Defendant's Attorneys.

LEROY F. YOUMANS, *Of Counsel.*

30 Service accepted 23d January, 1883.

BUIST & BUIST,
SIMONS & SIEGLING,
SIMONTON & BARKER,
LORD & INGLESBY,
T. M. MORDECAI,
Plaintiff's Attorneys.

EXHIBIT "A."

OFFICE OF STATE TREASURER,
COLUMBIA, S. C., *February 8th*, 1883.

This is to certify that it appears from an examination which I have made of the consolidation bond and stock registers of this office, the registers of the commission to investigate the indebtedness of the State appointed by joint resolution of 8th June, 1877, and the annotations made therein by the special commissioner (Mr. Coit), appointed by act of December, 1879, and also of the official reports made to this office by said special commissioner as required by act of December, 1879, that the consol coupon bonds and stock certificates specified hereinafter and belonging to the class known as "green consols" were issued under the provisions of the act of 22d December, 1873, for the consolidation of bonds and coupons of bonds as set forth in the statements following, to wit:

Consol bonds Nos. 2203 @ 2320, inclusive, of the denomination of $1,000 each	$118,000
Consol bond No. 493 for	500
Consol certificate No. 496 for	265
	$118,765

31 Issued in May, 1875, for relief of the treasury, bonds, act 1869 $170,000
Land commission bonds, act 1869 32,000
Coupons of bonds 35,530

Surrendered in the name of the Yonkers Savings Bank, New York, and amounting to $237,530

Of which amount so surrendered and consolidated $170,000 consisted of bonds for "relief of the treasury," act 1869	$170,000
$29,750 of coupons of same attached	29,750
$980 of coupons of same detached	980
	$200,730

Showing a rate per cent. of invalidity of .845072201, as ascertained and reported to this office by Mr. Coit, special commissioner.

Consol bonds Nos. 814 @ 865, inclusive, of the denomination of $500 each	$26,000
Consol certificate No. 686 for	105
	$26,105

Issued in October, 1875, for the following, viz:

Bonds, redemption bills receivable, act 1868	$3,000
Bonds, payment interest public debt, act 1868	43,000
Coupons of bonds	6,210
Surrendered in the name of Levy & Borg and amounting to	$52,210

32 Of which amount so surrendered and consolidated $42,000 consisted of bonds of second issue for payment of interest on public debt $42,000
$5,670 — coupons of same attached 5,670
$47,670

Showing a rate per cent. of invalidity, in accordance with the decision of the supreme court of S. C., of .9130434783, as ascertained and reported by Mr. Coit, special commissioner.

J. P. RICHARDSON,
State Treasurer S. C.

33 This case came on to be heard at the February term of the court of common pleas for Charleston county before the Honorable J. B. Kershaw, presiding judge, and a jury duly empanelled to try the said case, when the following proceedings were had:

The plaintiff offered the following testimony, which was submitted to the jury, the defendant offering no testimony:

34 NILES G. PARKER sworn:

Was treasurer of the State of South Carolina from July, 1868, to November, 1872, and *ex officio* a member of the financial board. In issuing bonds under the acts of the Legislature we took no note of the amount of interest due or of the amount of bills receivable to be redeemed or of the amount necessary to relieve the treasury, but issued the whole amount provided for in the acts.

There was a second issue of bonds for the payment of the interest on the public debt. The second issue bore the same date—1st October, 1868—as the first. The first issue were sent to Kimpton, the financial agent of the State, in November, 1868; the bonds were numbered from 1 to 1,000. The first issue bore on their face the words "Issued under an act to authorize a State loan to pay interest on the public debt." The financial agent reported to the financial board that these words impaired the market value of the bonds.

The second issue of $1,000,000 of bonds was then made with the approval of the financial board. These bonds were similar to the first in all respects, except that the words "Issued under an act approved August 26, 1868," were substituted for the objectionable words in the first issue. These bonds were all issued at one and the same time, and were sent to Kimpton, the financial agent, to assist him in raising money for the purposes of the State generally, and not especially for the purpose of raising money to pay interest on the public debt. I do not think there was any necessity to issue these bonds except to pay the interest on the public debt as existing under Governor Orr. I think the second issue was made six or eight months after the first. The second issue were used by Kimpton, the financial agent, to get money, either by sale or by hypothecation, before the first issue were retired. It happened that a party who held the same number of both issues called Kimpton's attention to that fact, and then Kimpton began to retire the first issue.

These bonds were issued with the intention and expecta-
35 tion that the first issue should be retired. In October, 1870, after the second issue had been made, Kimpton returned to the treasury $500,000 of the first issue, which were destroyed. Subsequently $50,000 were returned and cancelled. The remaining $450,000 were never retired. The entire amount of the second issue was negotiated, and the total amount of the bonds of both issues outstanding at the passage of the consolidation act was $1,450,000. Of this amount $253,000 had been exchanged by the holders for "conversion bonds." The remaining $1,197,000 were outstanding in their original form.

Extract from Message of Governor Moses, October 21, 1873.

"Under the act of August 26, 1868, to authorize a loan to pay interest upon the public debt, the American Bank Note Company printed $2,000,000 in two issues. The first issue amounted to $1,000,000. On account of some alleged omission they were not considered as salable as were other bonds of the State. It was, therefore, determined to prepare a second issue of $1,000,000 and to retire and cancel the first issue. Of said issue $500,000 were retired and destroyed by burning, as appears by the certificates of five of the officers of the executive department; $50,000 were cancelled and are on file in the treasury; $450,000 were never retired, and therefore exist as a debt of the State. The entire amount of the second issue was also negotiated. The total debt created under this act then amounts to $1,450,000. Of this amount $253,000 have been cancelled and conversion bonds issued in lieu, and $1,197,000 are outstanding in their original form."

36 *Copy Bond for Payment of Interest on Public Debt.*

First issue.

1,000. UNITED STATES OF AMERICA. 1,000.

No. 366. No. 366.

The State of South Carolina promises to pay to the bearer the sum of one thousand dollars, in the city of New York, on the first day of April, A. D. 1888, with interest at the rate — six per cent. per annum, payable semi-annually on the first days of April and October in each year on the presentation of the proper coupons hereto annexed. The faith, credit, and funds of the State are hereby solemnly pledged for the punctual payment of the interest and redemption of the principal of this bond by act of the General Assembly approved the twenty-sixth day of August, A. D. 1868.

Issued under an act to authorize a State loan to pay interest on the public debt.

In witness whereof the Governor of the State has signed this bond, the State treasurer has countersigned the same, and the seal of the State has been affixed, at Columbia, S. C., this first day of October, A. D. 1868.

ROBERT K. SCOTT, *Governor.*

Countersigned:
NILES G. PARKER,
State Treasurer.

37 *Copy Bond for Payment of Interest on Public Debt.*

Second issue.

1,000. UNITED STATES OF AMERICA. 1,000.

No. 440. No. 440.

The State of South Carolina promises to pay to the bearer the sum of one thousand dollars, in the city of New York, on the first day of April, A. D. 1888, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of April and October in each year on the presentation of the proper coupons hereto annexed. The faith, credit, and funds of the State are hereby solemnly pledged for the punctual payment of the interest and redemption of the principal of this bond by act of the General Assembly approved the twenty-sixth day of August, A. D. 1868.

Issued under an act approved August 26th, 1868.

In witness whereof the Governor of the State has signed this bond, the State treasurer has countersigned the same, and the seal of the State has been affixed, at Columbia, S. C., this first day of October, A. D. 1868.

ROBERT K. SCOTT, *Governor.*

Countersigned:
NILES G. PARKER,
State Treasurer.

38 Plaintiff put in evidence the following extract from the report of the bond commission:

The entire amount of consolidation bonds and certificates of stock issued and now outstanding is as follows:

3,547 bonds for $1,000 each	$3,547,000 00
1,216 bonds for $500 each	608,000 00
28 certificates of stock for $1,000 each	28,000 00
10 certificates of stock for $500 each	5,000 00
437 certificates of stock of miscellaneous denominations	156,549 36
81 exchange and transfer certificates of stock of miscellaneous denominations	51,741 05
Total amount of bonds and certificates of stock outstanding	$4,396,290 41

* * * * * * *

As this sum of $4,396,290.41 represents the actual amount of consolidation bonds and certificates of stock issued in exchange for old bonds, coupons, certificates of stock, and interest orders at the rate of fifty per centum of the face value of the latter, the entire amount of the latter in the treasury as vouchers should be $8,792,580,82. The investigation of the commission shows the actual amount of vouchers to be $8,792,779.

Class.	Amount of bonds.	Amount of attached coupons.	Amount of detached coupons.	Total amounts.
Bonds.				
Construction State capitol	$104,600 00	$8,628 00	$25,350 00	$138,578 00
Blue Ridge railroad	511,000 00	63,910 00	37,790 00	612,700 00
Funding interest, &c.	731,250 00	103,499 00	49,702 00	884,451 00
Redemption bills receivable	414,000 00	54,945 00	61,380 00	530,325 00
Payment interest public debt, first issue	211,000 00	28,020 00	34,260 00	273,280 00
Payment interest public debt, second issue	836,000 00	113,595 00	99,845 00	1,049,440 00
Funding bills, Bank of State	974,200 00	132,786 00	73,166 00	1,180,152 00
Relief of treasury	849,000 00	144,725 00	135,205 00	1,128,930 00
Land commission act, 1869	124,000 00	16,710 00	900 00	141,610 00
Land commission act, 1870	340,000 00	41,550 00	16,230 00	397,780 00
Conversion	1,166,300 00	164,803 00	69,762 00	1,400,865 00
Stock.				
Revolutionary War claims				21,452 52
Charleston fire loan				154,521 04
Construction State capitol				640,646 87
Funding interest, &c.				47,697 51
Conversion				44,000 00
Interest orders				146,350 06
Total	$6,261,350 00	$873,171 00	$603,590 00	$8,792,779 00

40 LOUIS D. DE SAUSSURE, sworn, says:

He is a bond and stock broker in the city of Charleston. He is the owner of the consols Nos. 850 and 851 for $500 each and No. 2290 for $1,000. He purchased these bonds on 11th March, 1878, through Talmadge & Co., bankers, in New York, and has owned them ever since. It was witness' custom in buying consols to examine and ascertain what securities had been surrendered when the consols he proposed to buy had been issued under the act of 1873. This was customary among parties dealing in these securities.

The plaintiff requested the presiding judge to charge as follows:

I.

That the provisions of the act of 22d December, 1873, were in the nature of proposals to the creditors of the State, and when the consolidation bonds were issued under said act and taken by the creditors a contract was consummated between them and the State, as fully as if all the provisions of the act had been embodied as express stipulations in the most formal instrument signed by the parties.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

II.

That the pledge that the coupons of the bonds so issued should be received in payment of all taxes due the State during the year in which they matured, except for the taxes levied for the public schools, formed a part of the contract, and was the security offered to the creditors; that the act of the Legislature of South Car-

41 olina entitled "An act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881," in so far as it prohibited the county treasurer from receiving the coupons of the consolidated bonds referred to in the complaint in payment of the taxes levied by said act, is null and void, as repugnant to article I, section 10, of the Constitution of the United States.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

III.

That the validity of the bonds for the relief of the treasury, issued under the act of 1869, which were surrendered to the State by the Yonkers Savings Bank in May, 1875, must be determined according to the law as it was judicially construed to be in the case of Morton, Bliss & Co. *vs.* The Comptroller General, and were valid obligations of the State.

That the decision subsequently made by the supreme court of the State in the State bond cases cannot receive a retroactive effect without impairing the obligation of contracts long before entered into.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

IV.

That by the act of August 26th, 1868, the Governor of the State was authorized to borrow on the credit of the State, on coupon bonds, within twelve months from the passage of the act, a sum not exceeding $1,000,000, or as much thereof as he might deem necessary to pay interest on the public debt.

42 But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

That the Governor was invested with full discretion and was clothed with full authority in determining the necessity for the issue of the bonds, the mode of their issue, and the amount of bonds to be issued in order to raise the sum of money required, and *bona fide* holders for value of the bonds issued by him or of the coupons of such bonds had no means of knowing in what manner the Governor exercised this discretion, and they cannot be affected by any abuse of authority by him.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

That by the recital on the face of the bonds that they were issued under the act approved August 26th, 1868, the State, as against a *bona fide* holder for value, was estopped from disputing the truth of such representation.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

V.

That the Legislature having, with a full knowledge of all the facts connected with the alleged overissue of the bonds for the payment of interest on the public debt, authorized the funding of the said bonds has waived said objections and validated the bonds.

43 But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

VI.

That the settlements made between the State and the Yonkers Savings Bank of New York in May, 1875, and between the State and Levy & Borg on 13th October, 1875, were such compromises of doubtful rights as are sufficient foundation for an agreement and consideration for a contract, and the validity of the new bonds issued to the Yonkers Savings Bank and to Levy & Borg rests upon these con-

tracts and compromises, and not upon the validity of the surrendered and cancelled securities.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

VII.

That the settlement made in May, 1875, between the State of South Carolina and the Yonkers Savings Bank was a unity, and the State cannot set it aside in part while it retains the land commission bonds surrendered by the Yonkers Savings Bank at the time said settlement was made, and the same rule applies to the settlement between the State and Levy & Borg of October, 1875.

But the said circuit judge did then and there refuse so to charge; to which refusal the counsel of the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

Refused the foregoing requests as a whole.

J. B. KERSHAW,
Presiding Judge.

44 The judge charged as follows:

"GENTLEMEN OF THE JURY: Under the present condition of the law affecting this case, as determined by the supreme court, and the legislation connected therewith you are directed on the pleadings and the evidence submitted to find a verdict for the defendant."

Whereupon the said counsel for the plaintiff did then and there, on behalf of the said plaintiff, except to the aforesaid opinion, decision, and instruction in these words—"Under the present condition of the law and the legislation connected therewith you are directed on the pleadings and the evidence submitted to find a verdict for the defendant"—to the said jury of the said circuit judge and to the whole thereof, and insisted on said several matters so offered in evidence as sufficient to sustain said action on the part of the said plaintiff and to entitle him to a verdict.

And did also then and there except to the direction of the said judge, as contained in the said charge to the said jury, to find a verdict on the pleading and evidence submitted for the defendant.

The jury returned the following verdict:

We find for the defendant.
March 7, 1884.

S. D. STONEY, *Foreman.*

Whereupon the following judgment was entered up in accordance with law in the office of the clerk of the court of common pleas and general sessions for the county aforesaid:

45 *Judgment on Verdict.*

THE STATE OF SOUTH CAROLINA, *County of Charleston:*

Court of Common Pleas.

L. D. DE SAUSSURE, Plaintiff,
against
P. C. GAILLARD, County Treasurer of Charleston County, Defendant.

The issues in this action having been brought on for trial before Mr. Justice J. B. Kershaw and a jury, at a circuit court held on the seventh day of March, 1884, and the issues having been tried and a verdict for the defendant having been duly rendered on the seventh day of March, 1884—

Now, on motion of C. Richardson Miles, attorney general, De Saussure & Son, and L. F. Youmans, for said defendant, it is adjudged that the plaintiff's complaint be dismissed.

C. RICHARDSON MILES,
Attorney General.
L. F. YOUMANS,
DE SAUSSURE & SON,
Defendant's Attorneys.
[SEAL.] W. W. SALE,
C. C. P. and G. S.

Notice of Appeal and Exceptions.

To Messrs. C. Richardson Miles, attorney general, De Saussure & Son, and L. F. Youmans, defendant's attorneys:

Please take notice that the plaintiff appeals to the supreme
46 court of South Carolina from the judgment rendered in this case, and will move the said supreme court to set aside the verdict therein and grant a new trial upon the following exceptions to the charge of his honor the presiding judge:

1. Because his honor refused the several instructions prayed for by the plaintiff.

2. Because his honor erred in directing the jury on the pleadings and evidence in the case to give a verdict for the defendant.

BUIST & BUIST,
SIMONTON & BARKER,
SIMONS & SIEGLING,
LORD & INGLESBY,
T. M. MORDECAI,
Plaintiff's Attorneys.
C. A. SEWARD, *Of Counsel.*

We accept service of this notice of appeal and exceptions, and we agree that the foregoing 37 pages shall constitute the record in this case for appeal to the supreme court.

CH. RICHARDSON MILES,
Attorney General.
LEROY F. YOUMANS.
DE SAUSSURE & SON.

Received a copy of these exceptions.

47 *Opinion.*

THE STATE OF SOUTH CAROLINA:

In Supreme Court. April Term, 1884.

B. J. WHALEY, Plaintiff, Appellant,

vs.

P. C. GAILLARD, County Treasurer of Charleston County, Defendant, Respondent.

LOUIS D. DE SAUSSURE, Plaintiff, Appellant,

vs.

P. C. GAILLARD, County Treasurer of Charleston County, Defendant, Respondent.

MCIVER, *A. J.:*

These two cases, involving as they do similar general principles, were heard and will be considered together. The plaintiffs tendered to the county treasurer in payment of their taxes certain coupons of bonds alleged to have been issued under the provisions of an act entitled "An act to reduce the volume of the public debt and provide for the payment of the same," approved December 22, 1873, 15 statutes, 518, which were refused by him upon the ground that said coupons had been adjudged by the decision of this court, in the "bond debt cases," 12 S. C. Reports, 200, not to be valid obligations of the State, and their receipt in payment of taxes had been forbidden by
48 law. Thereupon these actions were instituted to recover the amounts mentioned in said coupons, the plaintiffs claiming a right so to do under the provisions of an act entitled "An act to facilitate the collection of taxes," approved December 24, 1878, 16 Statutes, 785, and incorporated in the general statutes of 1882 as sections 268, 269, and 270, the avowed object being to obtain from this court a reconsideration of its former decision in the "bond debt cases" *supra*, with the view of carrying the question involved to the Supreme Court of the United States, but whether this object can be attained by the proceedings will be hereinafter considered.

The legislation of this State, a brief abstract of which is given in the pleadings, beginning with the joint resolution adopted June 8, 1877, was manifestly designed to ascertain judicially, by the rules and principles of law which regulate contracts between individuals, what was the valid debt of the State, and to make ample provision

for the prompt and punctual payment of the interest on the debt so ascertained. In pursuance of this manifest design the Legislature first directed a committee of its members, usually called the "bond commission," to make a thorough investigation of the debt of the State and report all the facts, together with their conclusions, to that body. When that report was made the Legislature, without undertaking to decide for itself the various questions raised in said report, as to the validity of a large portion of the alleged debt of the State, and notwithstanding the fact that the State could not be sued without its consent, voluntarily threw down the barriers which exempted it from suit, established a special court, consisting of three of the circuit judges of the State, called the "court of claims," invested it with jurisdiction "to hear and determine any case or cases brought to test the validity" of any of the bonds or other obligations of the State reported by the "bond commission" as invalid, and provided for a right of appeal to the supreme court of the State, together "with a right of appeal by writ of error or otherwise, as provided by law, to the Supreme Court of the United States." Joint resolution, approved 22d March,
49 1878, 16 statutes, 669. Several of those holding bonds or coupons reported as invalid by the "bond commission," embracing all of the various classes so reported, brought suits thereon against the State in the court of claims, and, from the judgment of that court in favor of the State, appeals were taken to the supreme court of the State, which court, on the 29th of September, 1879, rendered its decision adjudging all of the various classes of bonds there brought in question to be valid obligations of the State, except those issued under an act entitled "An act to authorize a loan for the relief of the treasury," approved 17th of February, 1869, 14 statutes, 182, and the second issue of bonds under an act entitled "An act to authorize a State loan to pay interest on the public debt," approved 26th of August, 1868, 14 statutes, 18, which, together with the consolidation bonds issued in exchange therefor under the act of the 22d of December, 1873, cited above, and usually designated as the "consolidation act," were invalid. The coupons in question in these cases belong to the classes so declared to be invalid. From this decision no appeal was taken, either by writ of error or otherwise, and, so far as we are informed, from the time when it was rendered, 29th September, 1879, to the time of the commencement of these actions, 5th December, 1882, and 3d January, 1883, no person claiming to be a creditor of the State has instituted any proceeding to ascertain or enforce any liability on the part of the State on either of the two classes of bonds thus adjudged to be invalid, or any consolidation bond issued in exchange therefor. After the judgment of the supreme court of the State, above mentioned, was rendered, there being no intimation of any appeal therefrom, the Legislature of the State passed an act, entitled "An act to provide for the settlement of the consolidated debt of the State in accordance with the decision of the supreme court of South Carolina," approved 23d December, 1879, 17 statutes, 104, which, with an amendment thereto, approved 19th February, 1880, 17 statutes, 240, provided, amongst other things, for the ap-

pointment of a special commissioner, whose duty it should
50 be to eliminate from the original consolidation bonds, presented for that purpose, so much thereof as had been adjudged to be invalid, reporting his action in the premises from time to time to the State treasurer, and for a new issue of consolidation bonds of a different color from the original, representing so much of the debt as had been adjudged to be invalid. In pursuance of these provisions, a very large amount of the original consolidation bonds, which were colored green and are usually designated as "green bonds" or "green consols," were exchanged for the new consolidation bonds, colored brown, and are usually designated as "brown bonds" or "brown consols," and represent the valid, unquestioned debt of the State, the coupons on which are received for taxes or are promptly paid on presentation. But as it was impossible to tell whether a "green bond" represented in whole or in part, and, if so, what part, any portion of the valid debt of the State without an examination of the records of the office of the treasurer of the State, where the various reports of the special commissioner above mentioned were filed, the various county treasurers of the State are not allowed to receive the coupons of the "green bonds" in payment of taxes until they have been examined and any invalidity which they may contain eliminated and the valid portion converted into "brown bonds."

It seems, therefore, that the scope and effect of this legislation was not to impair the obligation of any contract entered into by the State with its bondholders, whereby the State had agreed to receive the coupons of certain bonds in payment of taxes, but was simply to provide a mode of proceeding by which it could be definitely and easily ascertained whether a coupon offered in payment of taxes represented any portion of the valid debt of the State, for, unless it did, there certainly was no contract on the part of the State that it should be received in payment of taxes. It was in close analogy to the proceeding prescribed for ascertaining whether bills of a bank owned and controlled by the State and which
51 had been declared receivable in payment of taxes were valid obligations of the State, and as such entitled to be received for taxes. Tennessee *vs.* Sneed, 96 U. S. Reports, 69. As is said by Waite, C. J., in South Carolina *vs.* Gaillard, 101 U. S. Reports, at page 457, in speaking of similar legislation: "It does no more than provide a way of determining whether bills offered in payment of taxes are binding on the State." It certainly cannot be pretended that because a tax-payer tenders in payment of his taxes a coupon of a bond purporting to be a consolidation bond of the State, colored green, that the State and its fiscal officers are bound to receive it without question as to whether it is valid or invalid, and as the State cannot be sued except with its own consent, and then only in the mode which it permits, it follows necessarily that the only mode by which the validity of the coupon so offered in payment of taxes can be tested is that which has been prescribed by the State.

It is contended, however, that the plaintiffs in these actions were not parties to any of the actions instituted in the court of claims,

and are, therefore, not bound by any adjudication therein. This position might possibly be very well maintained if the defence here was based simply on the doctrine of *res adjudicata*, but that is not the ground upon which the defence rests. The true ground is that as the State could not be sued except with its own consent, and then only in the mode which it had seen fit to prescribe, and as the State did prescribe a mode by which it could be sued, and the validity of its debt tested upon the same principle by which the contracts of individuals are tested, and having invited all persons having claims against it whose claims were disputed to come in and assert and establish their claims, one who has failed to avail himself of the opportunity thus offered cannot afterward, in another proceeding not permitted by the State, maintain an action against the State or against any of its officers for refusing to do that which the laws of the State forbid. Louisiana *vs.* Jumel, 107 U. S. Reports, 711; Antoin *vs.* Greenhow, 107 U. S. Reports, 769.

52 But appellants contend that the act of 24th December, 1878, entitled "An act to facilitate the collection of taxes," 16 Statutes, 785, expressly authorizes the plaintiffs to bring their action against the county treasurer when their coupons have been tendered for taxes and refused. This position is, we think, based upon a total misconstruction of the true meaning of that act. It certainly never was designed to afford an opportunity to a bondholder to reopen the question as to the validity of any portion of the State debt, which it was supposed had been determined by the decision of this court in the "bond debt cases," from which no intimation of appeal had been given. The very object of the legislation of the State hereinbefore considered was, as we have seen, to obtain a final determination of the question of the validity of the State debt, and certainly the Legislature, by an act passed nearly a year before such final determination was reached, never intended to afford the means of reopening any of the questions thus finally determined. In addition to this, the phraseology of the act shows that it was never designed to afford a remedy to the bondholder in case his coupons were refused when tendered for taxes, but was intended solely to afford a remedy in case bills of the bank of the State were refused when tendered for taxes; but even if it should be conceded that the terms of the act to facilitate the collection of taxes was broad enough to cover a case in which coupons of bonds purporting to be bonds of the State are refused when tendered for taxes, as well as a case in which taxes are tendered and refused in other "funds and moneys" than the collecting officers are authorized by the act levying such taxes to receive, we do not see how these actions can be maintained. By the express terms of the act it must be made to appear that the county treasurer has illegally and wrongfully refused to receive payment of the taxes assessed against the plaintiff in anything else but "gold and silver coin, United States currency, national bank notes, and coupons which shall become payable during the year 1882 on the valid consolidation bonds of this State, known as 'brown bonds,'" as required to do by the

53 7th section of the "Act to raise supplies and make appro-

priations for the fiscal year commencing November 1, 1881," approved February 9, 1882, 17 Statutes, 104. Practically this last-mentioned act forbids county treasurers from receiving in payment of taxes any coupons of bonds which have not been ascertained in the manner prescribed by the legislation hereinbefore mentioned to be valid obligations of the State. Now, if, as we have seen, the State had the right to prescribe the mode by which the validity of any bond purporting to be an obligation of the State should be tested and determined, and if, as we have also seen, such mode was prescribed, and the validity of all the various classes of bonds purporting to be obligations of the State was passed upon and finally determined, it would seem to follow necessarily that the State had a perfect right to forbid its officers charged with the collection of its revenue from receiving in payment of taxes any coupons or other form of obligation which had not only not been adjudged to be a valid obligation of the State, but which, on the contrary, had been expressly adjudged to be invalid. There certainly can be nothing illegal or wrongful in an officer of the State yielding obedience to a law of the State passed in the usual form in pursuance of a judgment of its highest judicial tribunal of last resort, though express provision had been made for such appeal.

Even, therefore, if it be conceded that the language of the act to facilitate the collection of taxes could by a liberal contruction be regarded as broad enough to cover a case in which coupons had been refused when tendered for taxes prior to the adjudication of the validity of the State debt, or in a case which might subsequently arise in which coupons of the "brown bonds" should be refused when tendered for taxes, if the Legislature should hereafter see fit to prohibit the reception of such coupons for taxes, yet it is very clear that it cannot apply to the present case, in which the coupons refused have already been adjudged invalid. The decision in the "bond debt cases," whether right or wrong, settles the law
54 of the State until it is reversed or overruled by competent authority, and until that is done any act passed by the Legislature in pursuance of the principles thus determined must be regarded as the law of the land, to which every officer is bound to yield obedience, and his act in doing so cannot be characterized as either illegal or wrongful. We do not see, therefore, how the correctness of the principles determined in the "bond debt cases" can be brought under review in these cases so as to determine their decision. For even if it should now be determined that there was error in that decision in holding that the second issue of bonds to pay interest on the public debt, and the bonds issued for the relief of the treasury, together with the bonds issued in exchange therefor under the provision of the "consolidation act" of July 1873, were not valid obligations of the State, and that the coupons tendered by the plaintiffs in payment of their taxes are valid obligations of the State, we do not see how this could affect the result in the present actions. At the time the coupons were tendered and refused the law, as it was then settled, justified such refusal, and any subsequent change in the law, either by statute or judicial decision, cannot affect a transaction occurring before

such change in the law. Ohio Life Insurance and Trust Company *vs.* Debott, 16 How., 432; Gelpchers *vs.* Dubuque, 1 Wall., 206; Lee County *vs.* Rogers, 7 Wall, 181.

But was there any error in the decision in the "bond debt cases?" According to the proper practice appellants applied for and obtained leave to be heard against some of the points determined in that case, and the questions involved have been ably and elaborately argued on both sides. We must say, however, that the additional light thus thrown upon these questions only serves to convince us more fully of the correctness of the former decision. We do not propose to go over the ground covered by the former opinions, which will be found at page 263 and page 294 of 12 South Carolina Reports, but shall confine our attention to those points which it is supposed, erroneously, however, were not fully considered before, for although
55 some of the points now relied upon may not have been discussed in either of the former opinions, yet the most, if not all, of them were carefully considered in reaching our conclusion.

First. It is contended that the act to authorize a loan for the relief of the treasury had been adjudged to be constitutional by the decision of the supreme court of this State in the case of Morton, Bliss & Co. *vs.* The Comptroller General, 4 S. C. Reports, 430, and that the subsequent decision in the "bond debt cases" holding this act to be unconstitutional cannot affect the rights of those who acquired their bonds issued under that act and funded them in consolidation bonds under the act of 1873, as they "must be regarded as having acquired the bonds so surrendered upon the faith of the law as it was then declared to be, and their rights cannot be affected by any subsequent change in the law, whether such change be effected by statute or by judicial decision." The decision in Morton, Bliss & Co. *vs.* The Comptroller General was rendered 27th August, 1873, and the facts, as gathered from the records in these cases, are that Whaley acquired the coupon upon which his action is based about the 9th of November, 1882, from Eames & Moore, who had funded bonds under the consolidation act on the 14th of October, 1874, but when they acquired the bonds which they then funded, whether before or after the decision in Morton, Bliss & Co. *vs.* The Comptroller General, does not appear. The other plaintiff, De Saussure, acquired the coupons upon which his action is based on the 11th of March, 1878, from Levy & Borg and from the Yonkers Savings Bank, who had funded bonds under the consolidation act, the one in May and the other in October, 1875, but it does not appear whether they or either of them acquired the bonds so funded before or after the decision of the case of Morton, Bliss & Co. *vs.* Comptroller General. It seems, therefore, that Whaley acquired his coupon after the change in the law (as it is called) by the decision in the "bond debt cases," and De Saussure ac-
56 quired his after the investigation into the validity of the State debt had been announced, and after the report of the bond commission had been made (7th February, 1878), by which the bonds from which his coupons were taken had been reported as invalid and were soon after so adjudged to be. So that

the doctrine relied upon cannot apply to these cases. But in addition to this the position of the plaintiffs cannot be maintained, because, conceding the correctness of the abstract proposition of law, upon which it rests, it is based upon an entire misconception of the scope and effect of the decision in the case of Morton, Bliss & Co. *vs.* Comptroller General. That case did not decide that the "Act to authorize a loan for the relief of the treasury" was constitutional, but it simply decided that the objections to the constitutionality of that act, which were interposed in that case, were not tenable. The only objections there urged were, 1st, that the act was in violation of that clause of the constitution which required that no law providing for the contracting of a public debt should take effect "until it shall have been passed by the vote of two-thirds of the members of each branch of the General Assembly;" and, 2d, the clause which declared that "every such law shall levy a tax annually sufficient to pay the annual interest of such debt" and the construction there given to these two clauses was recognized and followed in the "bond debt cases." But when the question was presented in the last-mentioned case, whether the act in question was in conflict with two other distinct and separate clauses of the constitution, neither of which was construed or considered or even mentioned in the former case, it was clearly the duty of this court to construe those two clauses and determine whether the act in question was in conflict with both or either of them. It is perfectly manifest from the language used by the court in Morton, Bliss & Co. *vs.* Comptroller General that they did not undertake to decide anything whatever, except whether the objections there urged to the constitutionality of that act were well founded. At page 462 of 4 S. C. Reports the language is: "The objection of the
57 respondent to the constitutionality of the acts in question, on the ground that no such provision was made by tax for the payment of annual interest, is not well taken." Again, at page 467, "it must, therefore, be concluded that a vote of two-thirds of the members present at the time the vote was taken satisfies the requirements of the constitution." The respondent's objections in this respect are not well taken; and again, on the same page, "we have now considered all the objections urged by the respondent involving the question of the constitutionality of the five acts of the Legislature set forth in the relator's petition, and find that they present no just ground of objection to the validity of either of such acts." This language of the court, thus carefully confining their decision to the points made in that case, was well calculated to put the bondholders, as well as the general public, upon their guard by showing that the court did not intend to pass upon the general question of the constitutionality of the several acts there considered, but simply to determine whether the objections there urged were well founded. Finally, the language of Willard, C. J., who had prepared the opinion of the court in Morton, Bliss & Co. *vs.* The Comptroller General, in the concluding paragraph of the separate opinion in the "bond debt cases," shows conclusively that he did not understand that the general question of the constitutionality

of the act to authorize a loan for the relief of the treasury was considered or determined in the case of Morton, Bliss & Co. *vs.* The Comptroller General.

The cases of County of Cass *vs.* Johnston, 95 U. S. Rep., 360, and Douglass *vs.* County of Pike, 101 U. S. Rep., 677, are relied upon by appellants to sustain their position upon the point which we have just been considering, but we think an examination of these cases in connection with the previous case of Harshman *vs.* Bates County, 92 U. S. Rep., 569, will show that they do not sustain their position. In those cases it was the same clause of the constitution of Missouri, which at different times had received different construction, and

while it may well be that when the construction of a particu-
58 lar clause of the coustitution of a State has been settled by the highest judicial tribunal, rights accruing under such a construction cannot be impaired or affected by a subsequent change of such construction, it does not by any means follow that rights claimed under a statute which is in conflict with any provision of the constitution can be enforced by the courts simply because it has been adjudged that such statute did not conflict with some other distinct clause of the constitution. A statute which conflicts with any provision of the constitution is a dead letter, an absolute nullity, and the fact that the courts have decided in one case that it does not conflict with a particular clause in the constitution cannot impart any vitality to it if it is found to be in conflict with some other clause of the constitution. Full effect was given to this view of the doctrine contended for in the decision of the "bond debt cases," and it was there held that the construction placed by the court in Morton, Bliss & Co. *vs.* Comptroller General upon these clauses of the constitution which were then brought in question was conclusive and binding, although grave doubts were then entertained by a portion of the court, at least, as to the correctness of such construction.

In Boyd *vs.* Alabama, 94 U. S. Rep., 645, which is recognized in Douglass *vs.* County of Pike, 101 U. S. Rep., at page 687, as well expressing "the rules which properly govern courts in respect to their past adjudications," it is said: "Courts seldom undertake, in any case, to pass upon the validity of legislation where the question is not made by the parties. Their habit is to meet questions of that kind when they are raised, but not to anticipate them. Until then they will construe the acts presented for consideration, define their meaning, and enforce their provisions. The fact that acts may in this way have been often before the court is never deemed a reason for not subsequently considering their validity when that question is presented. Previous adjudications upon other points do not operate as an estoppel against the parties in new cases, nor conclude

the court upon the constitutionality of the acts, because that
59 point might have been raised and determined in the first instance.

In that case Boyd was indicted under a statute of Alabama prohibiting lotteries, and relied for his defence on the privileges conferred by an act passed in October, 1868, which had been repealed

by an act passed in 1871. Under a previous indictment against the same person it had been held by the supreme court of the State that, inasmuch as by the terms of the act of 1868 a contract had been created between the State and Boyd, the repealing act was void as to him, and he was consequently acquitted. But in the second case the court held that the act of 1868 was unconstitutional and therefore conferred no rights upon Boyd, either by contract or otherwise, and hence it furnished no ground for defence, and that the former decision did not estop the State from raising the question of the constitutionality of the act of 1868. He was accordingly convicted, and the judgment was affirmed by the Supreme Court of the United States.

But appellants also contend that the decision of this court in the "bond debt cases" was erroneous and should now be reversed. First, as to the constitutionality of the act to authorize a loan for the relief of the treasury.

The constitution of 1868, article IX, section 7, provides that "for the purpose of defraying extraordinary expenditures the State may contract public debts, but such debts shall be authorized by law for some single object, to be distinctly specified therein." It does seem to us that nothing can be clearer than that the act to authorize a loan for the relief of the treasury violates both of these clauses of the constitution. The body of the act affords no more information as to the object of the loan than the title; and, for all practical purposes, it might just as well have been entitled, An act to authorize a loan for the uses of the State government, for that was, in fact, the real object of the act. The debt thereby attempted to be contracted was certainly not "for some single object," and such object was not
60 "distinctly specified in the act." The purpose of this provision of the constitution undoubtedly was to indicate to the tax-payers when it was proposed to create a loan, the precise purpose to which the money to be borrowed was to be applied, and when the purpose declared by the act is expressed in the general terms "for the relief of the treasury" it afforded no indication whatever of the particular object to which the borrowed money was to be applied. On the contrary, when the money was paid into the treasury, as the terms of the act necessarily implied it was to be, it would become applicable and undoubtedly was applied to any of the various demands that might be made upon the treasury.

It is equally clear that the debt sought to be created by this act was not for any "extraordinary expenditure," for provision had already been made for the redemption of the "bills receivable" by an act passed 26th August, 1868, 14 Statutes, 18, for the payment of the interest then in arrear on the public debt by an act passed on the same day, 14 Statutes, 19, and for funding the outstanding bills of the bank of the State, by an act passed 15th September, 1868, 14 Statutes, 22, and we are not aware of any other expenditures which the Legislature was then called upon to provide for which could with any propriety be classed amongst "extraordinary expenditures," and none such have been suggested to us. The inevitable inference which accords with the well known fact is that the object

of this act was to raise money for the current demands on the treasury to meet the ordinary expenses of the State government, and therefore plainly in violation of the constitution. The position taken by one of the counsel for appellants that the question whether a debt proposed to be contracted is for the purpose of defraying an ordinary or extraordinary expenditure is one exclusively for the determination of the Legislature, and the fact that they have authorized the loan must be regarded as sufficient evidence that its object was to meet an extraordinary expenditure, would, it seems to us, render the constitutional provision wholly nugatory. Such a provision was undoubtedly inserted as a check upon the power
61 of the Legislature to contract public debts, and it follows, necessarily, that it cannot determine conclusively the limits of its power in this respect, for otherwise there would be no check upon its power except its own will.

Next, as to the second issue of bonds for the payment of the interest on the public debt, we think it equally clear that there was no shadow of authority for such issue, and therefore that the bonds of that issue never did constitute valid obligations of the State. It will be observed that the question is not what the Government might have lawfully done under the authority of "An act to authorize a State loan to pay interest on the public debt," 14 Statutes 19, but the question is whether he had any lawful authority for what he did do. The question is not whether, under the peculiar phraseology of the act, the Governor was limited to the issue of bonds to the amount of one million of dollars, or whether he might not have issued as many bonds as would be necessary to raise that amount of money, provided he should deem such an amount necessary to pay the interest on the public debt; but the question is whether, after having made one issue of a million dollars in bonds, he had any authority six or eight months afterwards to make a second issue of the same amount for the purpose of retiring the first issue, on account of some objectionable words used in the bonds of the first issue, the undisputed testimony showing that to be the sole object of the second issue. It is quite clear that the act in question does not even purport to contain any authority for the exercise of such a power. The Legislature, under the provisions of section 10 of article IX, might have provided by law for the substitution of one set of bonds for another, and possibly might have authorized the Governor to make such substitution, but they did not do so, and we do not see by what authority the Governor, or any other officer of the State, could, in the absence of any legislation authorizing it, assume to exercise such a power, and hence the bonds so substituted by the Governor, without any authority whatever, cannot consti-
62 tute any part of the valid obligations of the State. But even if we could hold, in disregard of the testimony, that such was not the object of the second issue of the bonds, but that they were designed to create a new additional dobt of the State, then it is equally clear that the act contains no shadow of authority for the creation of such new and additional debt. If the Governor could lawfully make a second issue we see no reason why he might not

make a third or fourth, or an indefinite number of issues, there being just as much authority under the terms of the act for a fourth issue as there is for a second, and certainly a construction leading to such a result cannot be regarded as a correct one.

Our next inquiry is as to the effect of the act of 22d December, 1873, 15 Statutes, 518, commonly called the "consolidation act." It is conceded that this act was not passed by the constitutional majority necessary for the creation of a public debt, and that it was not submitted to a vote of the people, as required by article XVI of the constitution, adopted 29th January, 1873, 15 Statutes, 466, and, therefore, nothing would seem to be clearer than that such act cannot have the effect of creating "any further debt or obligation" on the part of the State, and, as we said in the "bond debt cases," "must be regarded as simply a scheme for the readjustment of the then existing debt." It cannot have the effect of making anything a debt of the State which was not then a valid obligation of the State. The argument that the purpose and effect of the act was to reduce and not to increase the debt of the State, and therefore it was unnecessary that it should have been passed by a two-thirds vote, or submitted to a vote of the people, is not, in my judgment, entitled to any weight. The constitution having prescribed the only way in which a debt of the State can be contracted, any attempt of the Legislature to create one in any other way must necessarily be futile, even though the Legislature may at the same time and by the same act make such provisions as that the debt of the State, to a larger amount than the proposed new debt, shall be paid or otherwise extinguished.

63 If there is a lack of power to create the new debt that cannot be supplied by the payment of an old debt, but can only be supplied by complying with the requirements of the constitution; so that even if it be conceived that the effect of the "consolidation act," fully carried out, would be to reduce the gross amount of the debt of the State, yet it would by no means follow that bonds originally issued without constitutional authority would thereby become valid obligations of the State. They will still continue to be, as they were before, evidences of debt not contracted by the State in the only mode in which it could contract, and therefore not valid obligations of the State.

But it is contended that by the terms of the "consolidation act" a contract of compromise was entered into by the State with its bondholders which is binding upon the State. It seems to us that the argument in support of this petition wholly ignores the important and vital distinction between a State and the Legislature of a State, and assumes that the latter is invested with supreme power so far as making contracts for the State is concerned. This, as we have seen, is an entire mistake, and that, on the contrary, the power of the Legislature in contracting a public debt is limited and controlled by the express terms of the constitution. It will not be denied that it is essential to the validity of any contract, whether of compromise or otherwise, that there should be power in the contracting parties to make the contract in question. Now, as the Legislature, in undertaking to pass the "consolidation act," did not

pursue the mode prescribed by the constitution, in which alone any debt of the State could be contracted, any contract based upon that act, whether by compromise or otherwise, purporting to fix anything upon the State as a debt which was not so before, was without authority and an absolute nullity. The whole question is one of power. The very object of the constitutional provisions was to place restrictions upon the power of the Legislature to contract public debts, and to say that the Legislature could, by the act of 13th March, 1872, 15 Statutes, 278, commonly called the "validating act," or by the "consolidation act," neither of which
64 was passed by the requisite constitutional majority, make that a valid debt of the State which was not so before would be to say that the very body whose power was intended to be restricted by these constitutional provisions could, by these means, evade and utterly disregard such restrictions.

Again it is urged that the "consolidation act" must be regarded as a proposition by the State to its bondholders for a compromise of its doubtful rights, and that the State having received all the benefits must bear all the burdens of the arrangement. Without repeating here what we have just said as to the lack of power on the part of the Legislature to make any such arrangement, in so far as it involved the creation or acknowledgment of any new debt on the part of the State, we think such a view is based upon an entire misconception of the terms of the "consolidation act." It was not a proposition to the bondholders as a class or to the holders of any particular issue of bonds that if they, or even a majority of them, would surrender all their bonds new ones would be issued to them for one-half of their face value with the additional advantages proposed by the act, but it was a proposition addressed to each individual bondholder, and did not even involve the necessity that such individual bondholder should surrender all of his bonds before he would be entitled to exchange or fund any of them under the act. For example, if A held bonds, the validity of which has never been questioned, and also other bonds issued under the act to authorize a loan for the relief of the treasury, he might, under the terms of the "consolidation act," have retained the former and funded the latter, as there is not a word in the act to prevent him from so doing. It is an entire mistake, therefore, to say that the holders of bonds were induced to fund their unquestioned bonds by the opportunity offered them of funding those which might be questioned, and thus a final composition was had between the State and its bondholders. There is nothing in the act to authorize the assumption that any such inducement was held out to the bondholders and cer-
65 tainly nothing whatever to indicate that the State required, as a consideration for funding bonds that might be questioned, the surrender of other unquestionable bonds. Indeed, there is nothing in the act to indicate that the Legislature regarded any of the bonds, the funding of which was therein provided for, as questionable obligations of the State; and, on the contrary, the only bonds which seem to have been so regarded—a very large amount of the "conversion bonds"—were "declared to be absolutely null and

void;" so that it is difficult to conceive how either the Legislature or the bondholders could then have regarded the "consolidation act" as a proposition for the compromise of doubtful claims, and that the surrender of unquestionable bonds should be regarded as a consideration for the privilege of funding those that were questionable. When, therefore, a bondholder surrendered, for the purpose of funding, invalid bonds he parted with something which was of no value, and could, therefore, constitute no consideration for a contract, and the bonds which he received in exchange therefor rest upon no better foundation than those which he surrendered. We do not think the "lost bonds case," 15 S. C. Reports, 224, relied upon by the appellants is in point. In the first place, in that case there was no lack of power to make the contract; and, in the second place, it is very manifest that the arrangement there entered into was entered into as a whole and as a compromise of disputed claims. In fact that case turned upon the question whether the arrangement there brought in question was intended as payment or satisfaction, or whether it was intended as mere substitution of one class of bonds for the other, and it was held that the intention was payment a d not substitution.

We ave carefully considered the various cases cited by appellants decided by the Supreme Court of the United States since our decision in the "bond debt cases" was rendered, and we are unable to discover any conflict between the points there decided and the principles established by such cases; and after a careful con-
66 sideration of the whole matter, we can see no reason why the former decision of this court should be overruled.

The judgment of this court is that the judgment of the circuit court in each of the cases above stated be affirmed.

Simpson, C. J., and McGowan, A. J., concur.

Filed November 14, 1884.

A true copy.

Attest: ALBERT M. BOOZER, *Clerk.*

67 THE STATE OF SOUTH CAROLINA:

Supreme Court. November Term, 1884.

LOUIS D. DE SAUSSURE, Plaintiff in Error,

vs.

PETER C. GAILLARD, Treasurer of Charleston County, Defendant in Error.

I, Albert M. Boozer, clerk of the supreme court of the State of South Carolina, hereby certify that the foregoing and annexed 67 written and printed pages contain true and correct copies of all the proceedings and judgment of said court, together with the writ of error and copies of citation, petition, and writ of error bond filed in my office in the case of Louis D. De Saussure, plaintiff in error,

vs. Peter C. Gaillard, treasurer of Charleston county, defendant in error.

Witness my hand and the seal of the supreme court of South Carolina this February 5th, A. D. 1885.

[Seal Supreme Court of South Carolina.]

ALBERT M. BOOZER,
Clerk of Supreme Court of S. C.

Endorsed on cover: South Carolina supreme court. No. 205. Louis D. De Saussure, plaintiff in error, *vs.* Peter C. Gaillard, treasurer of Charleston county. Filed 16th February, 1885.

FILED
MAY 14 1888
JAMES H. McKENNEY
CLERK

Supreme Court of the United States,

OCTOBER TERM, 1888.

No. 205.

LOUIS D. DeSAUSSURE, PLAINTIFF IN ERROR,

vs.

PETER C. GAILLARD, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

SAMUEL LORD,
C. A. SEWARD,
Counsel for Plaintiff in Error.

CHARLESTON, S. C.
WALKER, EVANS & COGSWELL CO., PRINTERS,
Nos. 3 and 5 Broad and 117 East Bay Streets.
1888.

vs. Peter C. Gaillard, treasurer of Charleston county, defendant in error.

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THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No 205.

LOUIS D. DESAUSSURE, PLAINTIFF IN ERROR,

vs.

PETER C. GAILLARD, TREASURER OF CHARLESTON COUNTY. 1

The Constitution of South Carolina, framed under what are known as the Reconstruction Acts of Congress, was adopted in April, 1868.

"It is a historical fact," says the Supreme Court of the State, 4 S. C., 450, "that we are bound to notice that in 1868, the time when the Constitution was made, the position of the State, as it regarded financial credit, was unfavorable. It had just emerged from a war that had wasted, to a great extent, 2
the property of the State in public and private hands, and had deranged to a serious extent the industries and occupations of the people. A considerable public debt existed, with no adequate means to meet demands for accruing interest. For the three preceding years the government of the State had been in a disorganized and anomalous condition. The people were just preparing for the institution of regular government. The difficulties that under the most favorable circumstances surrounded the attempts of the States of this Union to make available their financial credit in domestic and foreign markets was increased by the exceptional financial political situation of the State." 3

The first session of the Legislature under the new Constitution was held in the autumn of 1868. It was composed to a very large extent of the same men who a few months previously had framed the Constitution.

By an Act approved 26th August, 1868 (14 Stat., 18), provision was made for paying arrearages of interest on the public debt.

4

Sec. 1 provided that the Governor of the State be, and he is hereby, authorized to borrow on the credit of the State of South Carolina on coupon bonds within twelve months from the passage of this Act a sum not exceeding one million dollars, or as much thereof as he may deem necessary to pay interest on the public debt.

Sec. 5: "The bonds authorized by this Act shall be sold at the highest market price and for not less than a sum to be fixed by the Governor, Attorney General and the Treasurer,

5

who are hereby authorized to appoint, under a commission signed by them some responsible bank or banker of the City of New York to act as Financial Agent of the State, to be subject to their direction and control."

In November, 1868, bonds of the amount of $1,000,000 were sent to H. H. Kimpton, a New York broker, who had been appointed Financial Agent of the State. The bonds were numbered from 1 to 1,000. They bore on their face the words, "*Issued under an Act to authorize a State loan to pay interest on the public debt.*" See copy of bonds of this issue, f. 36. The Financial Agent having reported that these words

6

impaired the market value of the bonds, it was determined to prepare a second issue of $1,000,000 and to retire and cancel the first issue, f. 35. These bonds were similar to the first in all respects, except that the words, "*Issued under an Act approved August 26, 1868,*" were substituted for the objectionable words in the first issue.

About six months after the first issue had been put upon the market, the bonds of the second issue were sent to Kimpton, and were sold by him.

Subsequently, Kimpton succeeded in returning $550,000

7

of the first issue. The remaining $450,000 were never received.

At the time of the passage of the Consolidation Act, there was outstanding, of both issues, $1,450,000. Of these, $1,197,000, were in the original form. The remaining $250,000 had been exchanged for "Conversion Bonds" issued under an Act, approved 23rd March, 1869, (14 Stat. 241,) entitled, "An Act to provide for the conversion of State Securities."

8

RELIEF OF THE TREASURY BONDS.

On the 17th February, 1869, an Act was passed, entitled, "An Act to authorize a Loan for the Relief of the Treasury." 14 Stat., 182.

Sec. 1, provides, "That the authority be, and is hereby given, to borrow in accordance with the provisions of Sec. 5, on the credit of South Carolina, on Coupon Bonds, within twelve months after the passage of this Act, one million dollars, or as much thereof as may be deemed necessary for the relief of the treasury of the State. Sec. 5, provides that the bonds might be pledged as collateral security, or sold under the direction of certain named officers at a price to be fixed by these officers."

9

In 1872, Morton, Bliss & Co., applied to the Supreme Court, for a mandamus to compel the Comptroller General to levy a tax for the payment of the interest due and to become due on five classes of bonds, among which were the bonds to pay interest on the public debt, and the bonds for the relief of the treasury. 4 S. C., 441.

10

The validity of the bonds were assailed by the Attorney General, on various constitutional grounds, to which it is unnecessary to refer further than to say that, the specific questions now raised as to the validity of these two classes of bonds were not then raised or passed upon by the Court. All the objections which were raised, were decided in favor of the relators, and an order was made directing the mandamus to issue.

This decision (filed 23rd August, 1873, 4 S. C., 441) threatened to reduce the State Government to bankruptcy, and an extra session of the Legislature was called. The

11

Governor immediately sent a message to the House, giving a detailed statement of the public finances and of the various classes of securities, which constituted the public debt. Among other things, he stated all the facts above recited as to the issue of the bonds for payment on interest on the
12 public debt. Trans. folio 35.

On the 22d December, 1873, an Act was passed (15 Stat., 818), entitled "An Act to reduce the volume of the public debt and provide for the payment of the same."

The first Section provides that the State Treasurer is authorized and required to receive from the holders willing to surrender the same * * * * "the bonds of the State issued under the Act of August, 1868, amounting to $1,197,000;" * * * "the bonds issued under the Act of February 17th, 1869, redeemable in 1888,
13 amounting to $856,000; * * and shall thereupon in exchange for and in lieu of said bonds and stocks so surrendered issue to said holders other coupon bonds or certificates of stock as they may desire, equal in amount to 50 per cent. of the face value of the bonds or certificates of stock so surrendered, and that the bonds known as the Conversion Bonds, amounting to $5,965,000, and which were put upon the market without authority of law be, and the same are hereby, declared to be absolutely null and void."

Section 3 provides that no tax shall ever be levied to pay the interest or principal on any of the bonds mentioned in the
14 first Section, as long as such bonds remain outstanding in their present form.

Section 5 provides that all coupons upon the bonds shall be received in payment of all taxes due the State during the year in which they mature, except for tax levied for the public schools.

Under this Act bonds and coupons to the amount of $8,792,779 were surrendered, f. 39, p. 22, and consols to the amount of $4,396,290 were issued in lieu thereof.

Among the surrendered securities were: First issue Interest Bonds, $211,000; second issue Interest Bonds, $835,-
15 000; Relief of Treasury Bonds, $849,000.

In May, 1875 (f. 30), the Yonkers Savings Bank of New

York surrendered to the Treasurer under this Act the following securities:

Relief of Treasury Bonds	$170,000
Land Commission Bonds	32,000
Coupons of	35,530
	$237,530
They received in exchange Consols	118,765

16

As the Land Commission Bonds were admittedly valid, they paid for their contract at least $16,000 by the surrender of valid securities to that amount.

In October, 1875, Levy & Borg surrendered to the Treasurer, f. 31, the following securities named in the Act:

Bonds for redemption of Bills Receivable	3,000
Bonds payment Interest Public Debt	43,000
Coupons	6,210
	52,210

17

They received Consols in exchange, $26,105.

Of the securities surrendered $4,540 were unquestionably valid. They therefore paid for their contract at least 50 per cent. of that amount, or $2,270.

The Consolidation Act was regarded as a final settlement of the State debt, until 1877, and interest was regularly paid on all the "consols" issued under the Act of 1872, until the year 1877.

18

On the 8th June, 1877, 16 Stat., 318, a joint resolution was adopted by the Legislature of the State which provided a commission to make an investigation of the entire amount of consolidated bonds and certificates of stock which had been issued under the Act of 1873, and report upon such indebtedness. This commission was directed to enquire and report. First. What was the entire amount of consolidation bonds and stocks issued? Second. Whether there were vouchers in the treasurer's office in the shape of canceled bonds, &c., for which the Consolidation Bonds and Stocks were issued to the amount required by the terms of the Consolidation Act.

19

Third. Whether such vouchers, canceled bonds, coupons, &c., had been issued in accordance with law. Fourth. Whether such canceled bonds were amongst those which were authorized to be consolidated by the terms of the Consolidation Act?

In due time the Commission submitted an elaborate report, accompanied with various schedules, that called No. 6 being intended to represent the Consolidation Bonds and Certificates
20 " affected by vouchers which in their judgment were not issued in accordance with law and authorized to be consolidated by the Act of 1872. Thereupon the Legislature, without either affirming or disaffirming the conclusions of the bond Commission, so far as the validity of the bonds and stocks mentioned in Schedule 6 were concerned, passed a joint resolution providing a mode of ascertaining the debt of the State and liquidating and settling the same. 16 Stat., 669.

That resolution in its first section, provides for the establishment of a Court of Claims, which, " shall have jurisdic-
21 tion to hear and determine any case or cases made up or brought to test the validity of any of the consolidated bonds, coupons and certificates of stock or any of the various classes of them mentioned in the report of the bond Commission as resting in vouchers not issued in accordance with law and authorized to be consolidated by the Act of 1873, and also as not issued in accordance with law and further designated and described in *Schedule* 6, of said report. In Sec. 9 it is provided, that the Attorney General and his associates, with the consent of the creditors of this State, or so many of them
22 as shall be necessary, may make up a case or cases to be heard and determined in said Court, in which, if practicable, the State shall be defendant, to test the validity of said Consolidated Bonds and Coupons and Certificates of Stock mentioned in said *Schedule* 6, bringing before the Court the various class of vouchers, which, it is alleged in the report of the said Commission impair the validity of the said Consolidated Bonds, Coupons, and Certificates of Stock or any of them. In pursuance of the provisions of the resolution, actions on the coupons of the various classes of bonds, men-
23 tioned in said *Schedule* 6, were brought before the Court of Claims, and the majority of that Court rendered their judg-

ment in favor of the State. From that judgment appeals were taken to the Supreme Court of the State.

The decision of the Supreme Court is reported in 12 S. C., 202, with the title of the Bond Debt Cases.

That Court overruled all the objections to the Consolidated Bonds specified in Schedule 6, except the objection to the *second issue of bonds to pay interest on the public debt.* As to these bonds it held : 24

1. That the Governor was not restricted by the Act, to the issue of $1,000,000 in bonds, but to the issue of such an amount of bonds as would realize $1,000,000 in money.

2. That after there had been one issue of bonds under this Act, there was no authority for another and subsequent issue under the same Act.

As to the "relief of the treasury bonds," it held that the Act under which these bonds were issued, violated the constitutional limitation, Sec. 7, Article IX, which provides that 25 "for the purpose of defraying extraordinary expenditures, the State may contract public debts, but such debts shall be authorized by law for some single object to be specified therein. (1.) In that it purports to create a debt which was not for the purpose of defraying extraordinary expenditures; and (2.) In that the debt is not authorized for some single object distinctly specified therein.

The judgment of the Court was :

1. That all the bonds issued under the Act of 22nd Dec., 1873, are valid obligations of the State of South Carolina, 26 except as follows :

1st. Such as were issued in exchange for bonds issued under the Act, entitled an Act to authorize a loan for the relief of the treasury, or for the *coupons of such bonds.*

2nd. Such as were issued in exchange for the second issue of bonds, under an Act entitled, "An Act to authorize a State loan to pay interest on the public debt," or the coupons of such bonds.

3rd. If any consolidation bond rests wholly upon any of the objectionable classes of bonds or coupons just mentioned, then it is wholly void, but if it rests only in part upon such 27 objectionable bonds and coupons, then it is only void to the

extent which it does rest upon such objectionable bonds or coupons, and for the balance it is a valid obligation of the State.

The State accepted this decision as final, and on the 23rd Dec, 1879, passed an Act for the settlement of the consolidated debt of the State in accordance with it.

28 The holders of these bonds not having accepted the provisions of that legislation, it is unnecessary for us to do more than to say that we adopt as a part of this statement, paragraph III, of defendant's answer, Trans. folios, 22–25, which gives a detailed and correct statement of the legislation and all that was done under it.

In December, 1882, Louis D. DeSaussure, the plaintiff in error, who held two of the bonds issued to Levy & Borg and also one of the bonds issued to the Yonkers Savings Bank,
29 tendered the said coupons to the defendant in error, the County Treasurer of Charleston County, in payment of his taxes for the fiscal year in which the coupon matured. The Treasurer refused to receive the coupon on the ground that he was prohibited by the provisions of the Tax Act from receiving these coupons, and the plaintiff thereupon paid to the Treasurer under protest the amount of his tax in legal tender notes of the United States, and in pursuance of the provisions of an Act of the Legislature approved 24th December, 1878, entitled "An Act to facilitate the collection of taxes" (16
30 Stat., 185), commenced this action.

PLEADINGS.

The complaint sets out the Act of 22d December, 1873; the surrender by Levy & Borg and the Yonkers Savings Bank of the bonds and coupons enumerated in the Act; the issue to them in exchange therefor of Consolidation Bonds; that upon each coupon of said bond was the following endorsement: "Receivable in payment of all taxes, except school tax;" that the plaintiff in 1878 became the holder and owner of certain of the bonds issued to Levy & Borg and the Yonkers Savings
31 Bank and all the coupons thereto annexed; that the State, by the Act to raise supplies and make appropriations for the fis-

cal year commencing November 1st, 1888, had prohibited the County Treasurers from receiving said coupons in payment of taxes; that the Act was repugnant to Art I, Sec. 10 of the Constitution of the United States; that on the 18th December, 1882, the plaintiff tendered to the defendant, he being the Treasurer of Charleston County, said coupons in part payment of his taxes; that the Treasurer refused to receive them, because forbidden to receive them by the Act; the payment under protest in pursuance of the Act of 24th December, 1878, to facilitate the collection of taxes, and demanded judgment for the amount so paid. 32

THE ANSWER.

Sets out the Joint Resolution of 1877 to raise the Bond Commission; the proceedings of the Commission; the creation of the Court of Claims; the proceedings before the said Court in the actions therein instituted; the judgments of the Court in favor of the State; the appeals from these judgments to the Supreme Court; the judgment of that Court as hereinbefore set out; the appointment of a Commissioner to ascertain and establish the exact percentage and amount of invalidity of each and every consolidated bond and certificate of stock in accordance with the principles laid down in the decision of the Supreme Court of the State; the duty imposed upon the Commissioner at least once in each month to make a detailed report to the State Treasurer, setting forth by their numbers the Consolidated Bonds, Coupons and Certificates of Stock investigated by him during the previous month, whether the same under the decision be wholly valid or partially invalid, and where partially valid the exact percentage, amount and character of the invalidity; the provision of the Act that every holder of a consolidated bond reported as partially invalid should have the right to surrender to the State Treasurer for cancellation such bond, and upon such surrender to receive from the State Treasurer a new bond *equal in amount* to the exact amount of the valid portion of such bond, and which bond shall have the benefits of all provisions of the Act of 22d December, 1873, and be in every respect similar 33 34 35

to the old bonds, except that they should be colored brown, and known as "Brown Consols."

That by a Joint Resolution approved 9th February, 1882, it was resolved as follows:

"Whereas, the Consol Bonds bear upon their face the contract of the State to receive the coupons of the same for
36 taxes;

"And, whereas, from the fact that the Green Consols outstanding are more or less tainted with invalidity, varying with each security (which has been established by the Courts and acquiesced in by the holder), the coupons from this class of bonds cannot be received by the Tax Collector, but can only be paid at the State Treasury, where access to the registry permits the amount of invalidity in each coupon to be ascertained: Now, therefore, in order to hasten the process now going on of the conversion of Green Consols into Brown Con-
37 sols, which latter represent the unquestioned debt of the State, and the coupons from which are now being received in payment of taxes:

"*Be it Resolved*, That on and after the first day of January, eighteen hundred and eighty-three, the interest upon the Green Consol Bonds and Stocks of the State shall not be paid at the Treasury until said securities have been converted into Brown Consol Bonds and Stocks."

IV. Defendant, further answering Paragraphs II and III of
38 said complaint, admits that on the tenth day of October, 1875, the State Treasurer received from Levy & Borg bonds and coupons of the class enumerated in the "Consolidation Act," approved December 22, 1873, amounting in the aggregate to fifty-two thousand two hundred and ten ($52,210) dollars; and issued in exchange therefor fifty-two (52) Consolidated Bonds, each of five hundred ($500) dollars, and one certificate of Consolidated Stock for one hundred and five ($105) dollars, being 50 per cent. of the face value of the bonds and coupons so surrendered, as alleged in Paragraph II of said complaint.

39 That among the Consolidated Bonds so issued to the said Levy & Borg, were bonds designated by the numbers 850 and

851, which are in the form set forth in Paragraph III of said complaint.

But this defendant, further answering, alleges that among the bonds and coupons so surrendered by the said Levy & Borg to the State Treasurer, amounting in the aggregate to the sum of fifty-two thousand two hundred and ten ($52,210) dollars, were the following:

40

Certain bonds endorsed "Issued under Act approved August 26, 1868," being a second issue under "An Act to authorize a State loan to pay interest on the public debt," approved August 26th, 1868, amounting in the aggregate to forty-two thousand dollars $42,000

And coupons attached to the said bonds amounting in the aggregate to five thousand six hundred and seventy dollars 5,670

Amounting in all to $47,670 41

That the bonds and coupons last aforesaid so surrendered by the said Levy & Borg were not, under the aforesaid decision of the Supreme Court of South Carolina, valid obligations of the State, but were null and void, and did not constitute a good and valid consideration for the consolidated bonds and certificate of stock issued in exchange therefor, of which the bonds Nos. 850 and 851, mentioned in the complaint, are two, are without consideration, and void to the extent to which they rest upon such void bonds and 42 coupons so surrendered.

The answer admits the surrender by the Yonkers Savings Bank of certain securities enumerated in the Act of December, 1873, and the issue of consolidated bonds and stocks, but claims that among the securities so surrendered were relief of the treasury bonds which were void and not a good and valid consideration for the consolidated bonds, which it claims were void to the extent to which they rested upon said bonds.

Further alleges that the holders of the bonds, the coupons 43 of which were tendered, *did not bring the same before the*

Special Court of Claims, and never surrendered the same to the Commissioner, or the Comptroller General, or the State Treasurer, to ascertain and establish the exact percentage and amount of the invalidity of the said bonds, as provided by law, and have never received new consolidated bonds, equal in amount to the valid portions of said bonds, as provided by law, known as Brown Consols.

44 States that the Act to raise supplies and making appropriation for the fiscal year, commencing November 1st, 1881, provides that the taxes levied thereby, shall be paid by the following kinds of funds and no other: gold and silver coin, United States currency, National bank notes, and coupons which shall become payable during the year 1882, on the valid consolidated bonds of the State known as "Brown Consols;" *Provided, however,* The jury certificates and the *per diem* of State witnesses in the Circuit Courts shall be received for County taxes, not including school taxes.

45 Defendant denies that said Act is repugnant to Article I, Section 10, of the Constitution of the United States.

This case came on to be heard at the February Term of the Court of Common Pleas for Charleston County, before the Honorable J. B. Kershaw, Presiding Judge, and a jury duly empanelled to try the said case, when the following proceedings were had:

The plaintiff offered testimony, printed in Trans. of Record, which was submitted to the jury; the defendant offering no

46 testimony.

The plaintiff requested the Presiding Judge to charge as follows:

I.

That the provisions of the Act of 22d December, 1873, were in the nature of proposals to the creditors of the State, and when the consolidation bonds were issued under said Act,

47 and taken by the creditors, a contract was consummated between them and the State, as fully as if all the provisions of

the Act had been embodied as express stipulations in the most formal instrument signed by the parties.

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

48

II.

That the pledge that the coupons of the bonds so issued should be received in payment of all taxes due the State during the year in which they matured, except for the taxes levied for the public schools, formed a part of the contract, and was the security offered to the creditors. That the Act of the Legislature of South Carolina entitled, "An Act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881," in so far as it prohibited 49
the County Treasurer from receiving the coupons of the consolidated bonds referred to in the complaint, in payment of taxes levid by the Act is repugnant to Article I of the Constitution of the United States.

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

50

III.

That the validity of the bonds for the relief of the Treasury, issued under the Act of 1869, which were surrendered to the State by the Yonkers Savings Bank in May, 1875, must be determined according to the law as it was judicially construed to be in the case of Morton, Bliss & Co. vs. the Comptroller-General, and were valid obligations of the State.

That the decision subsequently made by the Supreme Court of the State in the State Bond Cases, cannot receive a retroactive effect, without impairing the obligation of con- 51
tracts long before entered into.

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

IV.

That by the Act of August 26th, 1868, the Governor of the State was authorized to borrow on the credit of the State,
52 on coupon bonds, within twelve months from the passage of the Act, a sum not exceeding $1,000,000, or as much thereof as he might deem necessary to pay interest on the public debt.

That the Governor was invested with full discretion, and was clothed with full authority, in determining the necessity for the issue of the bonds, the mode of their issue and the amount of bonds to be issued, in order to raise the sum of money required; and *bona fide* holders for value of the bonds issued by him or of the coupons of such bonds, had no means
53 of knowing in what manner the Governor exercised this discretion, and they cannot be affected by any abuse of authority by him.

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

V.

That by the recital on the face of the bonds, that they were issued under the Act approved August 26th, 1868, the State,
54 as against a *bona fide* holder for value, was estopped from disputing the truth of such representation.

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

VI.

That the Legislature having, with a full knowledge of all the facts connected with the alleged over-issue of the bonds for the payment of interest on the public debt, authorized the
55 funding of the said bonds, has waived said objections and validated the bonds.

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the plaintiff, in due form and manner except.

VII.

That the settlements made between the State and the Yonkers Savings Bank, of New York, in May, 1875, and between the State and Levy & Borg on 13th October, 1875, were such compromises of doubtful rights as are sufficient foundation for an agreement and consideration for a contract; and the validity of the new bonds issued to the Yonkers Savings Bank and to Levy & Borg rests upon these contracts and compromises, and not upon the validity of the surrendered and cancelled securities. 56

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel for the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except. 57

VIII.

That the settlement made in May, 1875, between the State of South Carolina and the Yonkers Savings Bank was a unity, and the State cannot set it aside in part while it retains the Land Commission Bonds surrendered by the Yonkers Savings Bank at the time said settlement was made, and the same rule applies to the settlement between the State and Levy & Borg, of October, 1875. 58

But the said Circuit Judge did then and there refuse so to charge, to which refusal the counsel of the plaintiff did then and there, on behalf of the said plaintiff, in due form and manner except.

IX.

Because the Presiding Judge having charged the jury as follows: 59

"Under the present condition of the law affecting this case, as determined by the Supreme Court and the legislation connected therewith, you are directed on the pleadings and the evidence submitted to find a verdict for the defendant."

Whereupon the said counsel for the plaintiff did then and there, on behalf of the said plaintiff, except to the aforesaid
60 opinion, decision and instruction in these words: "Under the present condition of the law and the legislation connected therewith, you are directed on the pleadings and the evidence submitted to find a verdict for the defendant," to the said jury, of the said Circuit Judge, and to the whole thereof, and insisted on said several matters so offered in evidence as sufficient to sustain said action on the part of the said plaintiff, and to entitle him to a verdict.

And did, also, then and there except to the direction of the
61 said Judge, as contained in the said charge to the said jury, to find a verdict on the pleading and evidence submitted for the defendant.

The jury having found a verdict for the defendant, and judgment having been entered thereon, the plaintiff appealed to the Supreme Court of the State on the following grounds:

1. Because his Honor refused the several instructions prayed for by the plaintiff.

2. Because his Honor erred in directing the jury on the pleadings and evidence in the case to give a verdict for the defendant.

62 The case was heard upon these exceptions at the April Term, 1884, and a judgment rendered affirming the judgment of the Circuit Court.

ASSIGNMENTS OF ERROR.

I.

Because the Supreme Court of the State sustained the
63 refusal of the Circuit Judge to grant the several instructions prayed for by the plaintiff.

2.

Because the Supreme Court of the State sustained the direction of the Circuit Judge to find a verdict on the pleadings and evidence in this case for the defendant.

3. 64

Because the provisions of the Act of 22nd December, 1873, were in the nature of proposals to the creditors of the State, and when the Consolidation Bonds were issued under said Act and accepted by the Yonkers Savings Bank and Levy & Borg a contract was consummated between each of said parties and the State as fully as if all the provisions of the Act had been embodied as express stipulations in the most formal instrument signed by the parties.

That the pledge that the coupons of the bonds so issued 65
should be received in payment of all taxes due the State during the year in which they matured, except for the taxes levied for the public schools, formed a part of the contract, and was the security offered to the creditors. That the Act of the Legislature of South Carolina entitled "An Act to raise supplies and make appropriations for the fiscal year commencing November 1st, 1881," in so far as it prohibited the County Treasurer from receiving the coupons of the Consolidated Bonds referred to in the complaint in payment of the taxes levied by said Act, is null and void, as repugnant to Article I, Section 10, of the Constitution of the United 66
States.

ARGUMENT.

I.

The decision in the Bond Debt Cases, 12 S. C., is not a judgment of the Supreme Court of South Carolina, construing the Constitution and laws of the State, which without regard to its own opinion upon the questions involved, this Court is bound to adopt and apply in the present case. It is 67
a decision upon the very bonds here in suit, pronounced after

the controversy arose and between other parties. It was not a rule previously established so as to have become recognized as settled law, and which of course all parties to transactions afterwards entered into would be presumed to know and to conform to. It was made after the Relief of the Treasury Bonds, the Bonds for payment of interest on the public debt
68 and the Consolidated Bonds had all been issued and were in the hands of *bona fide* holders.

Carroll County vs. Smith, 111 U. S., 561.

AS TO VALIDITY OF SECOND ISSUE OF BONDS TO PAY INTEREST ON PUBLIC DEBT.

II.

69

The constitutionality of the Act under which these bonds were issued has been affirmed in the following cases:

Morton Bliss vs. Comptroller General, 4 S. C., 430.

Bond Debt Cases, 12 S. C., 285.

DeSaussure vs. Gaillard, 21 S. C., 560.

III.

The only question open is as to the construction of the Act.

In the Bond Debt Cases, 12 S. C., it was held that the Act
70 did not limit the amount of bonds to be issued to $1,000,000, but limited the amount to be raised to that sum.

The same view is taken in 21 S. C., 560.

This point may also be regarded as settled.

In 12 S. C. the Second Issue was declared invalid, because there was no authority for a second issue.

"The proposition which disposes of the question is that after the Governor had fixed the whole amount to be raised and had actually issued it, the whole intention of the Act was carried out and the authority it conferred was spent."

71

In 21 S. C., 578, the Court says:

"It is quite clear that there is no shadow of authority for this issue, and therefore that the bonds of that issue never did constitute valid obligations of the State. * * The question is not whether, under the peculiar phraseology of the Act, the Governor was limited to the issue of bonds to the amount of one million of dollars, or whether he might not have issued as many bonds as would be necessary to raise that amount of money, provided he should deem such an amount necessary to pay that interest on the public debt, *but the question is whether after having made one issue of a million of dollars in bonds he had any authority six or eight months afterwards to make a second issue of the same amount for* 72
the purpose of retiring the first issue on account of some objectionable words used in the bonds of the first issue, the undisputed testimony showing that to be the sole object of the second issue."

There is clearly a variance between the first decision and the second. The first holds that after the Governor had once determined that a certain sum was necessary he could not afterwards increase that sum if he was satisfied that his calculation was erroneous, p. 300; or that having once deter- 73
mined the number of bonds requisite to raise the amount required to pay the interest on the debt, and actually issued them, he could not make a second issue, if the first failed to realize as much as was expected, his authority having been exhausted.

The second holds that he had no authority to make a second issue for the purpose of substituting it for the first issue, and that this was the sole object of the second issue.

It is scarcely necessary to point out that this is not a question between the State and its agent, but between the State 74
and *bona fide* holders of the bonds of the State.

The authority given to the Governor was to borrow on the credit of the State, *within twelve months, such a sum as he might deem necessary to pay interest on the public debt,* not exceeding $1,000,000.

There are two express limitations in the power:

1st. The loans must be made within twelve months.

2nd. The sum borrowed is not to exceed $1,000,000.

It is not pretended that either of these restrictions were violated.

Was the Governor impliedly restrained from making more 75
than a single issue?

Such implication certainly cannot be deduced from any language used in the clause of the Act which confers the power, or in any other clause.

If, on the other hand, we look to the purpose of the Act, it seems impossible to escape the conclusion, that the power was intended, within the restrictions already referred to as to time and amount, to be a continuing power.

76 It is true that the amount of interest to be paid on the public debt might be ascertained from the books of the Treasury by a simple arithmetical calculation, if the books and vouchers of the Treasury were properly kept, and had escaped the destruction of Columbia by Sherman's army. But there is no evidence of this, and there was manifestly some cogent reason why the precise sum to be raised was not fixed by the Act, but was left to the determination of the Governor.

But if the amount to be raised was a fixed and definite
77 sum, it is quite clear that the amount which the bonds would bring on public sale was very uncertain; and the Governor could not possibly ascertain, except by actual experiment, how many bonds would be needed to raise the amount he deemed necessary to pay the interest on the public debt. This would be a difficult problem to solve, even where the bonds to be put upon the market were the bonds of a State having a stable government, and an established credit. But the bonds to be issued under this Act were the first obligations of a government created under Acts of Congress, which
78 one of the great political parties in the country still considered revolutionary and void, and of a State which had just emerged from a war that had wasted, to a great extent, both public and private property, and had seriously deranged the industries and occupations of the people.

It is not conceivable that the Legislature intended, under these circumstances, to deprive the Governor of the power to correct any error he might make as to the number of bonds required, and thus put it out of his power to pay the interest on the public debt, at a time when it was of the greatest importance to the State to make its financial credit available.

79 Whether then we look to the language of the Act, to its object, or to the circumstances which accompanied and influ-

enced its passage, we will find no ground for limiting the Governor's power to a single issue.

It is clear that if one wishing to purchase one of these bonds had examined the Act, he would have ascertained that the Governor had a right to issue two millions of bonds from time to time, within one year after the passage of the Act, if in his judgment two million of bonds were necessary for the purpose declared in the Act. 80

If this power existed, any loss occasioned by the irregularity or even fraud of the Governor in exercising the power with which he was clothed must fall upon the State.

Bond Debt Cases, 12 S. C., 273.

Lardner vs. Murray, 2 Wall., 110.

In cases where the power is given by a written authority, the law is thus stated by Judge Story: "If the written authority apparently justifies the act, it is no objection that the agent has secretly applied the authority to other purposes 81 than those for which it was given; as if, having an authority to make notes in the principal's name in managing his business, the agent should make such notes for secret purposes of a different nature, which could not be known to other persons dealing with him."

Story on Agency, (Ed. 1851,) § 73, and cases there cited.

If in the instrument authorizing the act a general discretion is reposed, the act of the agent, however indiscreet, becomes obligatory, unless indeed there be such gross misconduct as 82 amounts to a fraud upon the principal, *and that misconduct is known to the party contracting with the agent.*

Story on Agency, (Ed. 1851,) § 165.

The power and discretion given to the Governor in this Act were the power and discretion of the Legislature itself, and the State can no more escape the results of the acts of the Governor, under the authority thus transferred to him, than she could have avoided the payment of the bonds, had both issues been necessary to raise one million of dollars in the 83 opinion of the Legislature as expressed in the Act duly passed

by it, unless the purchasers of the bonds knew that the Governor was guilty of gross misconduct in the exercise of his authority.

To impose upon the purchaser of every bond of either issue, the duty, for the neglect of which he should lose his money, of examining into the affairs of the State to ascertain whether the Governor had properly exercised his discretion, would de-
84 stroy the very object of the Act, and render any exercise of authority under its provisions impossible, and the bonds, if issued, absolutely valueless.

In the language of Mr. Justice Cowen, in North River Bank *vs.* Aymar, "the rule presupposes a degree of capacity to look into the affairs, and even the private intentions of others, which no human being possesses."

3 Hill's Reps., (N. Y.,) 262, *et seq.*

In the case last cited Judge Cowen was discussing the
85 authority of an agent to pay bills drawn upon the principal by other agents "*as occasion may require*," and other similar provisions, and it was in considering the effect of words expressing a discretion to be exercised by the agent, or even a condition upon the exercise of the power, that Judge Cowen used the words above cited.

The Act under which the Governor acted, authorized him to issue bonds, in effect, as occasion might require, the language of the Act being "*such a sum as he might deem necessary*," &c., &c.; and the language cited applies with peculiar
86 force to a case in which all the affairs of the State, as well as the secret intentions of the officer charged with the duty of carrying out her law, were to be the subject of the closest scrutiny and the most searching investigation, before one purchasing her coupon bonds on the market could safely invest his money.

IV.

But even if there was no authority to issue the second mil-
87 lion of bonds, the State is yet bound for their payment.

There can be no doubt but that the State was bound for the

first issue. Now of this issue, $550,000 were extinguished by the *substitution* for them of $550,000 of the second issue.

In discussing this very question, as applicable to these bonds, the Supreme Court of South Carolina uses this language: "The Legislature, under the provisions of Section 10 of Article IX "(Appendix, "Extracts from Constitution"), "might have provided by law for the substitution of one set of bonds for another, and possibly might have authorized the 88
Governor to do so." (Whaley vs. Gaillard, 21 So. Ca, 574.) And the Court say, also, that "the question is, whether, after having made one issue of a million of dollars in bonds, he had any authority, six or eight months afterwards, to make a second issue of the same amount for the purpose of *retiring the first issue*, on account of some objectionable words used in the bonds of the first issue, *the undisputed testimony showing that to be the sole object of the second issue.*"

This means substitution or conversion.

It has been held by the Supreme Court of South Carolina, 89
in Morton, Bliss & Co. vs. the Comp. Gen., 4 S. C., 430, and in the Bond Debt Cases, 12 S. C., 203, that an Act permitting the exchange or conversion of outstanding bonds and stocks into new bonds, authorizes no new debt, and consequently bonds issued under such an Act are not within the constitutional provision that an Act creating a public debt shall not take effect "until passed by a vote of two-thirds of each branch of the General Assembly, to be recorded by yeas and nays in the Journals of each House respectively."

90

V.

If, then, the Legislature could have provided by law for this exchange of one security for another—that is, could have delegated to its agent the power to effect such exchange—it would seem that it could also, as in other cases involving the relations of principal and agent, ratify and confirm the Acts which it could thus have authorized.

In Morton, Bliss & Co., vs. Comp. Gen., 4 S. C., 471, it was held that an Act waiving conformity as to a matter within the discretion of the Legislature, need not be passed by the two- 91
thirds vote of that body.

The Legislature has twice recognized these bonds—ratified them—validated them—and consequently has ratified and validated the acts of the agent of the State who issued them, as if originally these acts were done with full authority of law.

The Validating Act, passed March 13, 1872 (Appendix), expressly did this, and the Consolidation Act, passed Decem-
92 ber 22, 1873, (Appendix,) was also a distinct and positive ratification.

This consolidation was authorized and directed by the Legislature, with all the facts before it—and in the first section of the Act the bonds are specified and recognized with distinctness—"*the bonds of the State issued under the Act of August 26, 1868, amounting to eleven hundred and ninety-seven thousand dollars ($1,197,000)*," this being the exact amount of both issues outstanding in their original form. For the funding of the other interest bonds which had been exchanged
93 for "Conversion Bonds" provision was made in another part of the Act.

VI.

Again, it is certain that of the $2,000,000 of these bonds, $1,000,000 were valid obligations of the State, and she could have recognized the bonds and protected the holders in two ways—she could have arbitrarily selected certain bonds to the specified amount and recognized those only, or she could
94 have paid on all *pro tanto*, provided the aggregate did not exceed the $1,000,000.

The Consolidation Act of 1873 was the adoption of the latter alternative. It offered the holders of these bonds fifty cents on the dollar, and the claim against the State was so reduced below its original limits.

This Act was, therefore, not only the recognition and ratification of the acts of her agent, but was, at the same time, the settlement of the indebtedness created by those acts.

Again: It has been repeatedly held in this Court that the
95 recital in a municipal bond of facts which the corporate officers had authority by law to determine and to certify, estops

the corporation from denying those facts, but a recital therein of facts which the corporate officer had no authority to determine, does not estop the corporation.

Dixon vs. Field, 111 U. S., 83.
Walnut vs. Wade, 103 U. S., 694.
Buchanan vs. Litchfield, 102 U. S., 289.

96

These cases, and many others, have arisen upon Statutes authorizing the issue of municipal bonds, upon certain conditions, and when certain prescribed formalities have been observed.

Now it will be observed that the only condition imposed upon the authority of the Governor to "borrow money on the credit of the State"—not to issue bonds—was that he should determine the one fact that the sum he proposed to borrow was necessary.

It seems to be unnecessary to argue the proposition that 97
the fact that bonds were issued in pursuance of the provisions of the Act, and were signed by the Governor, is as strong to create the estoppel as the most formal recital in the bonds, that the amount to be borrowed was, in the opinion of the Governor, necessary to pay the interest on the public debt.

VII.

AS TO THE VALIDITY OF THE BONDS FOR THE RELIEF OF THE TREASURY, (ACT OF 17TH FEBRUARY, 1869.)

98

Were these bonds issued for the purpose of defraying extraordinary expenditures? If so, they are within the provisions of the Constitution and are valid.

I.

Every possible presumption is in favor of the validity of the Statute.

Sinking Fund Cases, 99 U. S., 718.
Ogden vs. Saunders, 12 Wheat, 270.

99

2.

Who were the proper judges of the existence of extraordinary expenditures and the need for defraying them? The Legislature without doubt. That body alone has authority to raise money; to expend public money; to levy taxes; to
100 make appropriations. This is the legislative function, and exists nowhere in any other department of the Government. Whether the emptiness existed; whether there was a necessity for its replenishment; whether such relief could be afforded in any other than the given manner; whether the sale of the bonds was a pressing necessity which could not be otherwise delayed; whether such relief called for an extraordinary expenditure, and the creation of the debt therefor—were circumstances and facts within the exclusive knowledge of the Legislature, and within its exclusive judgment. This judgment when expressed is final.
101
Lynde vs. County, 16 Wall, 13.
Marcy vs. Township, 92 U. S., 637.
Commr's. vs. January, 94 U. S., 205.

The Legislature not only passed the Act of 1869, declaring it for the relief of the Treasury, and thereby declaring that it was for an extraordinary expenditure, and that such expenditure was necessary, but in 1872, (15 S. C., Statutes at Large, 278,) they again considered the matter and declared the Act valid.

102

3.

The Courts are bound to presume the existence of circumstances necessary to support an Act and give it validity, if such circumstances are necessary.

Wellington vs. Petitioners, 16 Pick., 96.

The exercise of authority by the Legislature carries with it the presumption that the facts upon which the Act was exercised, had been ascertained by the Legislature, and that it
103 acted within the sphere of its authority.

Judson vs. Plattsburg, 3 Dillon, 182.

Every possible presumption is in favor of the validity of the Statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the Government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule.

The Sinking Fund Cases, 99 U. S., 718.

104

4.

The circumstances surrounding this case are a striking proof of the wisdom of this rule.

The Legislature of South Carolina, in 1868–69, was placed in an abnormal and difficult situation.

The whole State Government after passing through a disastrous war and a period of military control, had been reconstructed; an entirely new condition of things existed. A large majority of the Commonwealth had been just invested 105
with the right of suffrage. A large part of the property of the State had been destroyed. The lands during the process of change from the old system to the new had depreciated. The mode of levying taxes—the collection of the tax when levied—the objects, and needs and plans of expenditure of public money, all were changed. The whole financial situation was disturbed and confused. New men as well as new measures were engrossing public affairs. Under such circumstances the Legislature was acting, and in the opinion of the Legislature, relief of the treasury was impera- 106
tively required. This relief could not be afforded in the mode suited to ordinary times, nor in the ordinary administration of the State Government. The condition of things was extraordinary; the times were extraordinary; the necessities of the Government were extraordinary; the expenditures were extraordinary. How could the Courts, in 1884, when a settled established and normal Government was in operation, and the State finances on a sure footing, go back to the unsettled condition of things in 1868–69, and with no facts before them conclude that the exercise by the Legisla- 107
ture of their peculiar function was erroneous.

5.

In Morton, Bliss & Co., vs. the Comptroller-General, 4 S. C., 430, April 1st, 1873, the question of the constitutionality of this Act was distinctly made, and its validity as distinctly declared. The Court made no qualification. Indeed, their conclusion was so absolute that they enforced it by *mandamus* on the State officers. The Supreme Court of South
108 Carolina, in Whaley vs. Gaillard, 21 S. C., 574, (April 1884,) now limit this decision only to the constitutional difficulties then raised, and decide on new objections, that the Act is invalid. In the case in 4 S. C., the Comptroller-General was a party, called upon to levy a tax under the authority of an Act of the Legislature. The Attorney-General of the State appeared and defended him. He was in fact the representative of the State. It does not seem improper to apply to that case the rule which prevails in South Carolina. That
109 "whatever might properly have been put in issue in that proceeding shall be concluded to have been put in issue and determined."

McDowell vs. McDowell, Bailey's Eq., 350.

6.

Be this as it may, certainly the parties from whose bonds the coupons in this case were cut, after that case was decided and before the case of Whaley vs. Gaillard, or the Bond Debt case (12 So. Ca., 209, 1879), were heard, surrendered claims
110 against the State and received their bonds; (thus acting on the faith of this decision). These bonds are coupon bonds, *payable* to bearer, and negotiable instruments. If so, they must be protected.

"Where municipal bonds have been put upon the market as commercial paper, the rights of the parties thereto are to be determined according to the Statutes of the State as they were then construed by her highest Court, and in a case involving these rights, this Court will not be governed by any subsequent decision in conflict with that under which they
111 accrued."

Douglass vs. County of Pike, 101 U. S., 677.

The settled judicial construction of a Statute is as much a part of the Statute, so far as contract rights were acquired thereunder, as the text itself. A change of decision is the same in its effect on pre-existing contracts as a repeal or an amendment by Legislative enactment. *Ibid.*

The Supreme Court of South Carolina disregards this doctrine, because the plaintiffs in error acquired their coupons on which they bring suit after the changed opinion of the 112
Court was promulgated. But holders of negotiable instruments are protected by the rights of those originally acquiring them.

Notice of prior equities cannot effect the title of a second holder if he acquired title from a prior holder who had no such knowledge.

Commrs. vs. Clark, 94 U. S., 286.
New Orleans, &c., Co. vs. Montgomery, 95 U. S., 18.

VIII. 113

THE CONSOLIDATION ACT.

The Act approved 22d December, 1873, commonly known as the Consolidation Act, was a compromise between the State and every person holding her bonds and certificates of stock, whereby, in consideration of mutual advantages, the parties creditors surrendered the obligations held by them, and in lieu thereof received new bonds at the rate of fifty per cent. In such composition each party settled forever all questions affecting the rights of each other, and 114
thenceforward, neither in equity or law, could the considerations leading to this compromise be reviewed, especially as it is not pretended that the composition was affected either by fraud, accident or mistake.

Louisiana vs. Pillsbury, 105 U. S., 278.
Story on Contracts, § 449.
Story's Eq. Juris., 129–131, and cases cited. 115
Stewart vs. Stewart, 6 Clark, 1 Finn., 911.
Stapleton vs. Stapleton, 1 Nlk., 10.
Gibbon vs. Count, 4 Vesey, 840.

Union Bank vs. Geary, 5 Peters, 99.
Barlow vs. Ocean Ins. Co., 4 Metcalf, 270.
Durham vs. Wadlington, 2 Strob. E., 258.
Lost Bond Cases, 15 S. C., 232.
103 U. S., 745.

116 The legal effect of the Consolidation Act as a compromise or contract was not discussed in the opinion of the Court in the Bond Debt Cases, 12 S. C., or by Judge Haskell in his dissenting opinion. The point was considered in the concurring opinion of Ch. J. Willard, who held—

1. (*12 So. Ca., page 306.*) "That whenever the holder of one of the *valid* obligations of the State surrendered the same, and took in lieu thereof the bonds or certificates of stock
117 provided to be issued under this Act, at fifty per cent. upon the face value of the obligation surrendered, this clause became a binding legislative contract based on an adequate consideration, namely, the surrender and relinquishment to one-half of the amount of such valid security, and as such the Legislature has no power to dispense with it."

2. "That a legislative contract, like any other contract, must be upon consideration" (12 So. Ca., page 306); but that there was no consideration in the case of a party giving up an invalid bond and taking another of less amount" (12 So.
118 Ca., page 307); "for if the obligation was void nothing was given up, and therefore no consideration exists" (page 307).

From these premises the Chief Justice draws this conclusion (page 310):

"It is clear, therefore, that there is no legislative contract founded on consideration to support the validity of any bond issued under the Consolidation Act, when the security for which it was issued was invalid in law."

It is impossible to reconcile the propositions laid down in
119 this opinion with the rule established by the authorities cited above, to wit: "That where compromises of doubtful

rights are fairly entered into, whether the uncertainty rests upon a doubt of fact or a doubt in point of law, the compromise is binding and cannot be affected by any subsequent investigation and result." *Story E.*, § *129, supra ; 2 Strob. E., 258 ; 15 S. C., 232.*

But in these cases it is unnecessary to consider the soundness either of the Chief Justice's premises or of his conclu- 120
sions, for the evidence shows that the Yonkers Bank surrendered Land Commission Bonds amounting to $32,000 (Transcript of Record, folio 31); that Levy & Borg surrendered bonds for the redemption of Bills Receivable amounting to $3,000 (Trans., ff. 32 and 33), and Eames & Moore bonds, under the Funding Act, amounting to $20,000, and Land Commission Bonds amounting to $14,000. It is impossible, therefore, to say that the several legislative contracts entered into with these persons respectively were without 121
consideration.

Each of these settlements was a unity, and the State cannot set any of them aside while it retains the valid securities surrendered at the time the settlement was made. *Lost Bond Cases, 15 S. C., 224.*

IX.

The only question, then, which presents the slightest difficulty is whether the Legislature is restrained by any consti- 122
tutional provision from entering into the legislative contract embodied in the Act of December, 1873.

The only provisions bearing upon the case are those contained in Section 7, Article IX, of the Constitution, which is as follows:

"For the purpose of defraying extraordinary expenditures the State may contract public debts, but such debts shall be authorized by law for some single object to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the 123
members of each branch of the General Assembly, to be re-

corded by yeas and nays in the journal of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt."

ARTICLE XVI. "To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the
124 General Assembly is hereby forbidden to create any further debt or obligation * * * * without first submitting the question as to the creation of any such new debt * * to the people of this State at a general State election; and unless two-thirds of the qualified voters of this State voting on the question shall be in favor of a further debt * * * none such shall be created or made."

125 It is clear that the sole object of these provisions is to prevent an increase of the burden resting upon the taxpayers, except in the mode and with the formalities prescribed by the Constitution. The authority of the General Assembly on this subject is contained in Article IX of the Constitution—Finance and Taxation. It clearly was the intention of this instrument, demonstrated by this circumstance itself, that no debt or obligation should be increased by the State for which provision should not at once be made by taxation.

By the 10th Section of Article IX, "No scrip, certificate,
126 or other evidence of State indebtedness, shall be issued, except for the redemption of stock, bonds, or other evidence of indebtedness, previously issued, *or* for such debt as are expressly authorized in this Constitution."

In Section 7 of the same Article, the debts which the General Assembly are expressly authorized to contract, are for the purpose of defraying extraordinary expenditures, and every law for such purpose must be passed by a vote of two-thirds of each House, the yeas and nays being recorded in their respective journals.

It is admitted that in the passage of the Consolidation Act
127 the yeas and nays were not recorded. Does this affect its validity?

The Act is entitled, "An Act to reduce the volume of the public debt, and provide payment of the same."

It enumerates in detail certain bonds and certificates of stock issued under the authority of the General Assembly, as well posterior as anterior to the present Constitution, 128
recognizes them as valid obligations, authorizes the Treasurer to receive any or all of them from the holders willing to surrender the same, and instructs him to issue to such holders in exchange for and in lieu of such bonds and stocks, other coupon bonds or stocks equal in amount to fifty per centum of the face value of the bonds or stock so surrendered. It declares invalid, bonds to the amount of $5,965,000, as put on the market without authority of law.

It makes similar provision for the coupons and interest orders, on the recognized bonds and stocks.

129

The Act does not create or contract a further debt. There is no extraordinary expenditure to be defrayed. There is no appropriation of money needing the levy of a new tax. All of the provisions of the Act are directed to the accomplishment of the purpose stated in its title, "to reduce the volume of the public debt." It dealt with liabilities of the State incurred, examined, ascertained, recognized and outstanding. It provided for their reduction, liquidation and redemption. It rearranged an existing debt, cut it down one half, and 130
divided among all of the creditors of the State the loss, as well as the advantages of the settlement. It does not come within the provisions of the 7th Section of the 9th Article, nor of the 16th Article, nor needs for its passage the two-thirds majority, nor the record of the vote, nor a submission to a popular vote.

And the operation and effect of the Act has been to reduce the volume of the public debt by several millions of dollars.

At the date of the passage of the Act the outstanding valid 131
obligations of the State were:

1st. Old Stock and Bonds $4,051,527 35

2d. Reconstruction Bonds and Stocks declared valid by the decision in Morton, Bliss & Co. vs. The Comptroller-General $4,193,600

132

Less amount declared invalid in Bond Debt cases, to wit:

Second Issue Interest Bonds	$1,000,000		
Relief of Treasury Bonds	856,000	1,856,000	2,257,600 00
Total valid debt			$6,451,000 00

Total amount authorized to be consolidated

133 under the Act of 22d December, 1873—

$9,886,627 @ 50% 4,943,313 00

Or $1,507,678 00

less than the valid debt.

Total amount of Consols issued (folio 95 Whaley case) 4,396,290 41

Amount of Securities surrendered $8,792,580, leaving still outstanding 1,094,047 00

Amount of debt, if to the Consols we add all

134 valid outstanding Securities $5,490,337 00

So that whether we take the debt as it was recognized by the Consolidation Act, or the debt as it has been established by the decisions of the Court after a most thorough and elaborate examination, we find that by the provisions of the Consolidation Act the volume of the public debt has been reduced at the very least from $6,451,000 to $5,490,337.

135 It is manifest, therefore, that the Act does not in any proper sense of the Constitution create any *further* debt or obliga-

tion; but that it provides for a settlement and adjustment of the existing debt of the State; and this being its purpose and effect it was properly enacted, and every bond issued under it for vouchers and securities therein enumerated is a valid obligation of the State, notwithstanding any defects, irregularities and illegalities to which the surrendered vouchers 136
may be obnoxious. These are all waived and effectually cured by the Act, and it is vain to say the Legislature had no power to do this.

SAMUEL LORD,
C. A. SEWARD,
Representing Counsel of Plaintiff in Error.

APPENDIX.

EXTRACTS FROM CONSTITUTION.

ARTICLE 9.

SECTION 7. For the purpose of defraying extraordinary expenses, the State may contract public debts: but such debts shall be authorized by law for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by a vote of two-thirds
137 of the members of each branch of the General Assembly, to be recorded by yeas and nays on the journals of each House respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt.

SECTION 10. No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

SECTION 14. Any debt contracted by the State, shall be by loan on State bonds of amounts not less than fifty dollars
138 each, on interest, payable within twenty years after the final passage of the law authorizing such debt. A correct registry of all bonds shall be kept by the Treasurer in numerical order, so as always to exhibit the number and amount unpaid, and to whom severally made payable.

Amendment to Constitution 1873.

ARTICLE 16.

To the end that the public debt of South Carolina may not
139 hereafter be increased, without the due consideration and free consent of the people of the State, the General Assembly is

hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State, without first submitting the question as to the creation of any such new debt, guarantee, endorsement or loan of its credit, to the people of this State at a general State election; and unless two-thirds of the qualified voters of this State, voting on the question, shall be in favor of a 140
further debt, guaranty, endorsement or loan of its credit, none such shall be created or made.

"VALIDATING" ACT.

AN ACT RELATING TO THE BONDS OF THE STATE OF SOUTH CAROLINA.

Whereas, bonds or obligations of this State have been 141
issued, from time to time, to a large amount, in accordance, as was supposed by the officers issuing the same, with the authority and provisions of certain Acts of the General Assembly, including "An Act to authorize a loan to redeem the obligations known as the Bills Receivable of the State of South Carolina," approved August 26, 1868; also, "An Act to authorize a State loan to pay interest on the public debt," approved August 26, 1868; also, "An Act to provide for the appointment of a Land Commissioner, and to define his powers and duties," approved March 27, 1869; also, "An Act to 142
amend the last named Act, and for other purposes," approved March 1, 1870; also, "An Act to authorize a loan for the relief of the Treasury," approved February 17, 1869; also, "An Act to provide for the conversion of State securities," approved March 23, 1869; and, "An Act to authorize the Financial Agent of the State of South Carolina, in the city of New York, to pledge State bonds as collateral security, and for other purposes," approved March 26, 1869; which said bonds are fully and particularly stated and set forth in a report made by the Treasurer of the State to the General As- 143
sembly, dated October 31, 1871; and whereas, doubts have

arisen whether said issues were in strict conformity to the provisions of the said several Acts under which they were respectively issued; and whereas, it was the true intent and meaning of the several Acts above set forth that such issues of bonds or obligations should be made in the manner in which the same have been made, as aforesaid; and, whereas,
144 also, doubts have been raised as to the validity of some of the bonds mentioned in the said annual report of the State Treasurer, for the fiscal year ending with October 31, 1871, although money had been borrowed by, or realized out of, said bonds on account of this State; and, whereas the credit of this State has been affected thereby:

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the said bonds and obligations, issued on behalf of this
145 State, as mentioned and set forth in the report of the Treasurer of this State to the General Assembly, dated October 31st, 1871, were duly and lawfully issued in conformity with the true intent and meaning of the several Acts of the General Assembly hereinbefore set forth by their respective titles.

SEC. 2. That the acts of the officers of this State, authorized under the provisions of the laws of this State, and of the several Acts hereinbefore referred to, to the extent of all issues of bonds or obligations enumerated and set forth in the said report of the Treasurer be, and are hereby, in all
146 things, ratified, confirmed and established.

SEC. 3. That each and all of the bonds named in said annual report of the Treasurer of this State for the fiscal year ending October 31st, 1871, be, and the same are hereby declared to be, legal and valid bonds of the State of South Carolina, for the payment of which the faith, credit and funds of the State have been, and are hereby pledged: *Provided*, That no bonds be included which are not registered in the Treasury at the time of the passage of this Act, as provided for by Section 14 of Article IX of the Constitution, relating to finance and taxation.

147 SEC. 4. The Section of each of the Acts under which said bonds purport to be issued, which provides for an annual

tax to pay the interest, is hereby declared to be a part of this Act; and an annual tax, in addition to all other taxes, shall be levied upon the property of the State, sufficient to pay the interest on the bonds named in or provided for, by this Act, until the principal of said bonds shall become due, such payment to be made in United States currency only. 148

SEC. 5. Hereafter every bond converted or issued under or in pursuance of any of the laws of this State, shall be of the description and style of those heretofore issued under an Act entitled "An Act to provide for the conversion of State securities," approved March 23rd, 1869, so that all the bonds of this State shall be of one description and style, as soon as the exchange can be made: *Provided*, That all bonds of the State of South Carolina converted into stock of said State, and alt stock of the State of South Carolina, converted into conversion bonds of the State, as provided for in the Act hereinbefore mentioned, approved March 23, 1869, shall be 149 cancelled immediately upon the conversion of the same, and retired from issue or hypothecation.

SEC. 6. All bonds heretofore authorized to be issued shall be issued in pursuance of, and in conformity with, the provisions of this Act, and shall be converted into bonds, of the style and description named in the next preceding Section, as speedily as the same can be done.

SEC. 7. That neither the sum or sums realized from any sale or sales of any of the bonds of this State, nor the manner of sale of any of the bonds of this State., shall in any manner affect or impair the validity and obligation thereof.

SEC. 8. The Governor is hereby authorized and required 150 to sign all of the bonds named in this Act. The State Treasurer is authorized and required to countersign the same. And the Secretary of State is authorized and required to affix the seal of the State to the same without delay: *Provided*, That no bonds shall be signed by the Governor, or countersigned by the State Treasurer, except for the conversion of bonds or stocks already issued pursuant to law.

SEC. 9. Nothing contained in this Act shall authorize the issue or conversion of any bonds of this State other than those 151 named in the report made by the State Treasurer, as specified

in the 3d Section of this Act, and such as have been authorized under previous laws of this State.

SEC. 10. The Commercial Warehouse Company, in the city
152 of New York, and the Carolina National Bank, in the city of Columbia, South Carolina, are hereby declared to be authorized places for the registering of the bonds, coupons or stocks of the State of South Carolina, and they are authorized, on the passage of this Act, to immediately advertise in one or two of the principal papers in each of the cities of New York, Columbia and Charleston, to the holders of all the bonds, coupons or stock of the State of South Carolina, the necessity of registering their bonds, coupons or stocks at one of the above authorized places of registry. In the registration of said bonds, coupons or stocks, the number and denomination
153 of each bond, coupon, or certificate of stock, the Act under which it was issued, and the name of the person, association, corporation or firm presenting the same, shall be recorded, and the time and place of registration shall be endorsed upon said bonds, coupons or stocks, so that the same bonds, coupons or stocks may not be presented at more than one place for registration. It shall be the duty of the said Commercial Warehouse Company, in the city of New York, and the Carolina National Bank, in the city of Columbia, South Carolina, to publish, in the cities of New York, Charleston and Columbia, quarterly statements of the whole amount of bonds, cou-
154 pons or stocks registered by them, the number, denomination, and the Act under which they have been issued. The State Treasurer and the Financial Agent of the State, in the city of New York, shall not pay interest on said bonds or stocks until they have been registered according to the requirements of this Act.

SEC. 11. All Acts or parts of Acts contrary to, or inconsistent with, this Act are, for the purposes of this Act, but for no other purpose, hereby repealed.

SEC. 12. This Act shall take effect immediately.

155 Approved March 13, 1872.

CONSOLIDATION ACT.

AN ACT TO REDUCE THE VOLUME OF THE PUBLIC DEBT, AND PROVIDE FOR THE PAYMENT OF THE SAME.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the State Treasurer is hereby authorized and required to receive, from the holders willing to surrender the same, all the certificates of stock issued under Act of 1794, and redeemable at pleasure, amounting to thirty-eight thousand eight hundred and thirty-six and sixty one-hundredth dollars ($38,836.60); the certificates of stock issued under Act of June 1st, 1838, redeemable in 1870, amounting to three hundred and three thousand three hundred and forty-three eighty-nine one-hundredth dollars ($303,343.89); the certificates of stock issued under Act of December 20, 1856, redeemable in 1877, amounting to one hundred and eighty-nine thousand three hundred and eighty-five and eighty one-hundredth dollars ($189,385.80); the certificates of stock issued under Act of December 21, 1857, and redeemable in 1888, amounting to one hundred and twenty-one thousand and fifty-one and thirty-seven one-hundredth dollars $121,-051.37); the certificates of stock issued under Act of December 21, 1858, one hundred and fifty-six thousand seven hundred and twenty dollars ($156,720) of which redeemable in 1883, and one hundred and forty-five thousand nine hundred and ninety dollars ($145,990) in 1885; the certificates of stock issued under Act of December 22, 1859, seventy-five thousand seven hundred and forty-six and twenty-four one-hundredth dollars ($75,746.24) of which redeemable in 1887, and one hundred and thirty-nine thousand four hundred and thirty dollars ($139,430) in 1889; the certificates of stock issued under Act of January, 22, 1861, fifty-seven thousand eight hundred and ninety dollars ($57,890) of which redeemable in 1882, and sixty-five thousand four hundred and fifteen dollars ($65,415) in 1886; the certificates of stock issued under Act of February, 1863, redeemable in 1890, amounting to one thousand five hundred and sixty dollars ($1,560); the

156 157 158 159

certificates of stock issued under Acts of September and December, 1866, redeemable in 1887, amounting to seventy-nine thousand four hundred and thirteen and ninety-four one-hundredth dollars ($79,413.94); the certificates of stock issuec under Act of March 23, 1869, redeemable in 1888, amounting to sixty-four thousand dollars ($64,000); the bonds of the State issued under Act of June 1, 1838, redeemable in 1868, amounting to four hundred and eighty-one thousand nine hundred and forty-four and fifty-one one-hundredth dollars ($481,944.51); the bonds of the State issued under Act of December, 1853, redeemable in 1871, amounting to thirty-eight thousand dollars ($38,000); the bonds of the State issued under Act of December, 1855, redeemable in 1881, amounting to two hundred and forty-nine thousand dollars (249,000); the bonds of the State issued under Act of December, 1854, two hundred thousand dollars ($200,000) of which redeemable in 1875, one hundred and ninety-eight thousand dollars ($198,000) in 1876, two hundred thousand dollars ($200,000) in 1877, two hundred thousand dollars ($200,000) in 1878, and one hundred and sixty-eight thousand dollars ($168,000) in 1879; the bonds of the State issued under Act of December, 1866, redeemable in 1885, amounting to eleven thousand six hundred dollars ($11,600); the bonds issued under the Acts of September and December, 1866, four hundred and sixty-five thousand four hundred dollars ($465,400) of which redeemable in 1887, and four hundred and sixty-four thousand eight hundred dollars ($464,800) in 1897; the *bonds of the State issued under the Act of August 26, 1868, redeemable in 1888, amounting to eleven hundred and ninety-seven thousand dollars ($1,197,000)*; the bonds issued under the Act of August 26, 1868, redeemable in 1888, amounting to four hundred and eighty-four thousand dollars ($484,000); the bonds issued under the Act of September 15, 1868, redeemable in 1888, amounting to eleven hundred and eighty-nine thousand six hundred dollars ($1,189,600); *the bonds issued under Act of February 17, 1869, redeemable in 1888, amounting to eight hundred and fifty-six thousand dollars ($856,000)*; the bonds issued under Act of March 27, 1869, redeemable in 1888, amounting to one hundred and twenty-

four thousand dollars ($124,000); the bonds issued under Act of March 1, 1870, redeemable in 1888, amounting to three hundred and forty-three thousand dollars ($343,000); the bonds issued under Act of March 23, 1869, redeemable in 1888, for the *purpose of exchange* of any of the certificates of 164
stock or bonds above enumerated, said fact being ascertainable from the Treasurer's registry of bonds and stocks converted, amounting to one million five hundred and seventy-seven thousand five hundred dollars ($1,577,500); and shall thereupon, in exchange for, and in lieu of, said bonds and stocks so surrendered, issue to said holders other coupon bonds or certificates of stock as they may desire, equal in amount to fifty per centum of the face value of the bonds or certificates of stock so surrendered, and that the bonds known as the conversion bonds, amounting to $5,965,000, and which 165
were put upon the market without any authority of law, be, and the same are hereby, declared to be absolutely null and void.

SEC. 2. That the State Treasurer is hereby authorized and required to receive from the holders willing to surrender the same all the coupons upon the *bonds before mentioned* which have accrued, or will accrue, on the first of January, 1874, and the interest orders upon interest due upon certificates of stock as aforesaid, to the date aforesaid; and shall thereupon, in exchange for and in lieu of such coupons or interest orders so surrendered, issue to said holders coupon bonds or certifi- 166
cates of stock, as they may desire, equal in amount to fifty per centum of the face value of the coupons or interest orders so surrendered.

SEC. 3. That the bonds and certificate of stock herein authorized to be issued shall bear upon their face the words "Consolidation Bonds," "Certificates of Stocks," and shall also bear upon their face the declaration that the payment of the interest and the redemption of the principal is secured by the levy of an annual tax of two (2) mills upon the dollar upon the entire taxable property of the State, which declaration shall be considered a contract entered into between the State and every holder of said bonds and stocks: *Provided*, 167
That no tax shall ever be levied to pay the interest or prin-

cipal on any of the class of bonds or certificates of stock mentioned in the first Section, as long as such bonds or certificates of stock remain outstanding in their present form.

SEC. 4. That said bonds and certificates of stock shall be signed by the Governor, counter-signed by the Comptroller-
168 General, and have the great seal of the State affixed thereto the coupons shall be signed by the Treasurer, the name of the Treasurer being lithographed or engraved thereon. That there shall be preserved in the offices of the State Treasury and Secretary of State a description of the dates, amounts and time of issuing said bonds and certificates of stock; and the bonds and certificates of stock so taken up shall be cancelled by the Treasurer, and a list of their dates, numbers and amounts, and by whom signed, recorded in the office of the Secretary
169 of State.

SEC. 5. That the said bonds and stocks shall bear interest at the rate of six per cent. per annum, payable semi-annually at the State Treasury, and at such place in the city of New York as shall be designated by the Financial Board of the State, on the first day of January and July in each year, and shall be of such denominations as may be most convenient, but of uniform design and appearance, and shall be payable within twenty years from the passage of this Act, and shall be dated January 1st, 1874, and the first coupon shall fall due July 1, 1874; and all coupons upon the bonds and the interest orders of said certificates of stock herein authorized
170 to be issued shall be received in payment of all taxes due the State during the year in which they mature, except for tax levied for the public schools; and the said coupon bonds and stocks shall at all times be exchangeable, the one for the other, upon application to the State Treasurer.

SEC. 6. That the faith, credit and funds of the State are hereby solemnly pledged for the punctual payment of the interest and final redemption of the principal of said bonds and stocks, and for providing a surplus fund for that purpose.

SEC. 7. That the fund so created shall be kept separate and apart from all other funds, and shall be applied, first, to the
171 payment of the annually accruing interest upon the bonds and certificates of stock herein authorized; second, the sur-

plus remaining in the Treasury, after the payment of the said interest, shall be applied (on or after the first day of July of each year) to the extinguishment of the public debt, and to no other purpose.

SEC. 8. That the Governor, Treasurer, Comptroller-General, 172
Chairman of the Committee on Finance of the Senate, and the Chairman of the Committee on Ways and Means of the House of Representatives shall constitute a Board of Commissioners for the management and control of the said surplus fund for the extinguishment of the public debt.

SEC. 9. That said Board shall give notice, by public advertisement, for thirty days prior to the first of September of each year, that they have under their control the sum of dollars to be applied to the purchase of such bonds and stocks as may be presented by the holders thereof for payment on the 1st of September as aforesaid: *Provided*, 173
That said bonds be purchased at a price not above their market value at the time of purchase, said value to be ascertained at the principal stock markets of the United States, by bids from the holders thereof, due notice having been given in one or more newspapers in the cities of Columbia, Charleston, Baltimore, Philadelphia, New York, Boston and Chicago, and the stocks or bonds offered at the lowest price shall in all cases be the stock or bonds purchased.

SEC. 10. That the bonds, coupons and stocks so redeemed shall be immediately cancelled by the holders thereof, at the time of redemption, and filed in the office of the Treasurer, 174
and be entered as credits upon, and to that extent in the extinguishment of, the public debt. That a detailed statement of the number, denomination and series of the bonds and stocks so redeemed and cancelled, together with the price paid for each bond and stock as aforesaid, shall be prepared by the Treasurer, signed by the Board, and furnished to the General Assembly at each annual session thereof.

SEC. 11. That all bonds and stocks of the State received in exchange for the bonds or stocks herein authorized shall be cancelled immediately by the holders thereof, on presenting the same for exchange, and filed by the Treasurer with the 175
permanent records of his office; and a correct registry shall

be kept of all exchanges made under this Act, so as to exhibit in a separate account and convenient form the numbers and amounts of all bonds and stocks received into the Treasurer's office, together with the numbers and denominations of all bonds and stocks issued in exchange therefor. And the Secretary of State is hereby required to keep, at all times, a correct registry of all the bonds sealed by him under the provisions of this Act; and the Governor is, in like manner, hereby required to keep a similar registry of all bonds signed by him, each registry to be accessible for public inspection at all times.

SEC. 12. That embezzlement or diversion of the said funds, whether directly or indirectly, by speculating in said bonds and stocks, or purchasing them at fictitious prices, are hereby declared to be a felony, punishable by a fine of not more than fifty thousand dollars nor less than five thousand dollars, and imprisonment for not more than ten years nor less than one year in the Penitentiary, proportionate to the amount embezzled or diverted; and the person or persons so offending shall be forever disqualified from holding any office of profit or trust in this State, unless the General Assembly shall, by a two-thirds vote, relieve him or them of such disability, upon payment into the Treasury of double the amount embezzled or diverted.

SEC. 13. That for the purpose of defraying the expenses to be incurred in carrying out the provisions of this Act, the sum of five thousand dollars, if so much be necessary, is hereby appropriated, to be drawn on the warrant of the Comptroller-General, to be approved by the Governor for the first year, and afterwards such sum as shall be fixed by law, and the said Board shall report to the General Assembly on or before December fifteenth, how said fund has been expended.

SEC. 14. That if any officer of the State, upon whom any duty is involved under the provisions of this Act, shall neglect or refuse to perform said duty, he shall be subject to indictment for felony, and, upon conviction thereof, shall be fined in a sum not less than ten thousand nor more than twenty thousand dollars, and imprisonment in the Penitentiary

not less than three nor more than five years, at the discretion of the Court.

Approved December 22, 1873.

180

AN ACT TO FACILITATE THE COLLECTION OF TAXES.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That in all cases in which any State, County or other taxes are now or shall hereafter be charged upon the books of any County Treasurer of the State against any person, and such Treasurer shall claim the payment of the taxes so charged, or shall take any step or proceeding to collect the same, the person against 181
whom such taxes are charged or against whom such step or proceeding shall be taken shall, if he conceives the same to be unjust or illegal for any cause, pay the said taxes notwithstanding, under protest, in such funds and moneys as the said County Treasurer shall be authorized to receive by the Act of the General Assembly levying the same, and upon such payment being made the said County Treasurer shall pay the taxes so collected into the State Treasury, giving notice at the time to the Comptroller General that the payment was made under protest, and the person so paying said taxes may 182
at any time within thirty days after making such payment, but not afterwards, bring an action against the said County Treasurer for the recovery thereof in the Court of Common Pleas for the County in which such taxes are payable; and if it be determined in said action that such taxes were wrongfully or illegally collected, for any reason going to the merits, then the Court before whom the case is tried shall certify of record that the same were wrongfully collected and ought to be refunded, and thereupon the Comptroller General shall issue his warrant for the refunding of the taxes so paid, which shall be paid in preference to other claims against the Treasury: *Provided*, that the County Treasurers shall be re- 183
quired to receive jury and witness tickets for attendance upon

the Circuit Courts of the State receivable for taxes due the County in which the said services are rendered.

SEC. 2. That there shall be no other remedy in any case of the illegal or wrongful collection of taxes or attempt to collect taxes, or attempt to collect taxes in funds or moneys which the County Treasurer shall be authorized to receive under the Act of the General Assembly levying the same,
184 being other than such as the person charged with said taxes may tender or claim the right to pay, than that provided in Section 1 of this Act. And no writ of *mandamus* shall be granted or issued from any Court, or by the Judge of any Court, directing or compelling the reception for taxes of any funds, currency or bank bills not authorized to be received for such taxes by the Act of the General Assembly levying the same; and no writ, order or process of any kind whatsoever staying or preventing any officer of the State charged with a duty in the collection of taxes from taking any step or proceeding in the collection of any tax, whether such tax is
185 legally due or not, shall in any case be granted by any Court, or the Judge of any Court, but in all cases whatsoever the person against whom any taxes shall stand charged upon the books of the County Treasurer shall be required to pay the same in such funds and moneys as the said County Treasurer shall be authorized to receive by the Act of the General Assembly levying the said taxes in manner and form as above provided, and thereupon shall have his remedy under the provisions of the first Section of this Act, and in no other
186 manner.

SEC. 3. That in all cases in which any person against whom any taxes stand charged upon the books of any County Treasurer of the State has heretofore tendered in payment of the same any funds, currency or bank bills other than such as the said Treasurer was authorized to receive by the Act of the General Assembly levying said taxes, the said Treasurer shall receive from such person the said taxes without penalty in funds or moneys authorized to be received by the Act of the General Assembly levying the same: *Provided*,
187 That such taxes shall be so paid within sixty days from the passage of this Act; and any person so paying the same may

do so under protest, and thereupon shall be entitled to all the benefits of the remedy provided in Section 1 of this Act.

SEC. 4 That in any action brought under the provisions of the first Section of this Act, no costs or disbursements shall be taxed or allowed in favor of either party, except for the service of process and procuring the attendance of witnesses.

SEC. 5. In the construction of this Act the word "person", as therein used shall be held to include firms, companies, as- 188
sociations and corporations, and shall be used in the plural when the same taxes are charged against several individuals in a joint capacity.

SEC. 6. That all Acts and parts of Acts inconsistent with or repugnant to the provisions of this Act be, and the same are hereby repealed.

Approved December 24, 1878.

124-216

Office. Supreme Court U. S.
FILED.
MAR 19 1888
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

DE SAUSSURE

vs.

GAILLARD.

ADDITIONAL POINTS FOR PLAINTIFF IN ERROR.

I.—This case is plainly within U. S. R. S., 709, "a final judgment or decree in any suit in the highest Court of a State in which a decision in the suit can be had where is drawn in question . . . the validity of a statute of or an authority exercised under any State on the ground of their being repugnant to the Constitution . . . of the United States, and the decision is in favor of their validity."

1. The validity of a State statute contravening the provision of the Constitution (Art. 1, § 10), against impairing the validity of contracts, was in terms drawn in question by allegation 9 of the complaint, p. 7., fol. 15; and this allegation was put in issue by the answer, p. 16, fol. 29.

2. It was drawn in question by plaintiff's request to charge that the act was void, p. 23, par. 2, fol. 41; and the request was refused, and the judge directed a verdict, his direction being expressly put upon "the present condition of the law and the legislation connected therewith," p. 25.

3. It is plain, therefore, by this record, without looking into the opinion, that the decision was in favor of the validity of an act or statute of the State against the objection that it was repugnant to the statute of the United States, and that the decision could not have been sustained if the decision on that point be erroneous.

II.—An examination of the opinion shows that the judgment cannot be sustained without sustaining the decision of this Federal question.

1. This requires an analysis of the reasoning of the opinion, because the Court manifest their disposition to avoid putting their decision upon the Federal question, and divide their opinion in such a way as to appear on a cursory reading to put the decision on another ground, viz.: the construction of the State statutes as determining the duty of State officers.

At folio 48, p. 27, the Court, alluding to the bringing of these actions, says: "The avowed object being to obtain from this Court a reconsideration of its former decision in the 'bond debt cases' *supra*, with the view of carrying the question involved to the Supreme Court of the United States, but whether this object can be obtained by the proceedings will be hereinafter considered."

The opinion does discuss and determine the Federal question.

On page 29, the Court say: "It seems, therefore, that the scope and effect of this legislation was not to impair the obligation of any contract entered into by the State with its bondholders, whereby the State had agreed to receive the coupons of certain bonds in payment of taxes,

but was simply to provide a mode of proceeding by which it could be definitely and easily ascertained whether a coupon offered in payment of taxes represented any portion of the valid debt of the State, for, unless it did, there certainly was no contract on the part of the State that it should be received in payment of taxes."

And on page 37, last paragraph, the Court say: "But it is contended that by the terms of the 'consolidation act' a contract of compromise was entered into by the State with its bondholders which is binding upon the State. It seems to us that the argument in support of this position wholly ignores the important and vital distinction between a State and the Legislature of a State, and assumes that the latter is invested with supreme power so far as making contracts for the State is concerned."

And on page 38, fol. 64, add: "Again it is urged that the 'consolidation act' must be regarded as a proposition by the State to its bondholders for a compromise of its doubtful rights, and that the State having received all the benefits must bear all the burdens of the arrangement."

And on page 39: "When, therefore, a bondholder surrendered, for the purpose of funding invalid bonds, he parted with something which was of no value, and could, therefore, constitute no consideration for a contract, and the bonds which he received in exchange therefor, rest upon no better foundation than those which he surrendered."

2. The decision of the Federal question was essentially involved in the supposed "other ground" on which the Court sought to put its decision in this case.

This other ground is, that the statute relied on as au-

thorizing plaintiff to sue, did not include the plaintiff, and the reason assigned for so holding is that the legislation in question which was valid because it did not impair the obligation of contract, had given him a previous opportunity and (being valid) had cut him off for not availing himself of it.

The Court sustains the refusal of the State officer to receive the coupons by discussing the legislation which led to the decision in the "bond debt cases," and holding, p. 29, that "the scope and effect of this legislation was not to impair the obligation of any contract entered into by the State with its bondholders," but simply to prescribe the only mode by which it could be sued; and that as the plaintiff had been effectually cut off by the effect given by the State Court to that legislation, which it held did not impair the obligation of contract, the later statute, authorizing holders of coupons to tender them and sue the State, if refused, must be so construed as to exclude him because already cut off. In other words, he could not sue the State officer because his coupons had been previously invalidated, and the previous invalidation relied on was effectual because the legislation which accomplished it did not impair the obligation of a contract.

This traces the "other ground" of the decision down to its foundation in the same State legislation which the decision sustains against the objection that it was in contravention of the Constitution of the United States.

3. Where the case involves two grounds, only one of which is a Federal question, the test of the right to dismiss for want of jurisdiction, is whether there is a clear case of a sufficient ground on which the validity of the decree of

the State Court could rest, even if it had been in error as to the Federal question. This Court will take jurisdiction unless it is apparent that they could not reverse the judgment of the State Court, even if it erred on the Federal question.

Kennebeck R. R. Co. *vs.* Portland R. R. Co., 14 Wall., 23.

4. An evasion of the decision of the Federal question in the opinion of the State Court will not take away the jurisdiction of this Court.

Chapman *vs.* Goodnow's Admr., 123 U. S., 546.

5. It is no answer to argue that it is not the validity but the construction of the State legislation of which plaintiff complains. This question was determined in Bridge Proprietors *vs.* Hoboken Co., 1 Wall, 116, 144, where this objection was made. The Court say: "It is said, however, that it is not the validity of the Act of 1860, which is complained of by plaintiffs, but the construction placed upon that act by the State Court. If this construction is one which violates the plaintiffs' contract, and is the one on which the defendants are acting, it is clear that the plaintiffs have no relief except in this Court, and that this Court will not be discharging its duty to see that no State Legislature shall pass a law impairing the obligation of a contract, unless it takes jurisdiction of such cases."

6. This, therefore, is clearly a record presenting a federal question within the settled rules laid down in Armstrong *vs.* Treasurer of Athens County, 16 Peter, 281, and approved in Bridge Proprietors *vs.* Hoboken Co., 1 Wall., 116, 143.

In the latter case, the Court say: "It is enough that the Court are able to see clearly, from the whole record, that a certain provision of the Constitution or act of Congress was relied on by the party who brings the writ of error, and that the right thus claimed by him was denied."

MARCH, 1888.

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LOW & INGLESBY,
T. M. MORDECAI,
C. A. SEWARD,
For Plaintiff.

In The Supreme Court of the United States,

OCTOBER TERM, 1887.

No. 205.

LOUIS D. DESAUSSURE, *Plaintiff in Error,*

v.

PETER C. GAILLARD, TREASURER OF CHARLESTON COUNTY.

In Error to the Supreme Court of the State of South Carolina.

POINTS AND AUTHORITIES.

JOS. H. EARLE,
Attorney General of the State of South Carolina,
for the Defendant in Error.

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POINTS AND AUTHORITIES.

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Attorney General of the State of South Carolina,
for the Defendant in Error.

The plaintiff in error, as it appears, tendered to the treasurer of Charleston County coupons of consolidated bonds, other than those which became payable during the year 1882, on the valid consolidated bonds of this State, known as the "Brown Bonds," in payment of taxes assessed against him under the act to raise supplies and make appropriations for the fiscal year commencing November 1, 1881. 1

The coupons so tendered by him the treasurer had no authority to receive under the 7th section of said act. 17 Stat., 1070. 2

The ground of this action is, that said act to raise supplies for the fiscal year 1881 is repugnant to the Constitution of the United

States, art. 1, sec. 10, because, as it is alleged, it prohibits the county treasurers from receiving in payment of taxes the coupons tendered by the plaintiff in error, notwithstanding, as he claims, the contract of the State expressed in the consolidation act of 1873, and recited in the bonds.

The question, then, is whether the said act to raise supplies and make appropriations for the fiscal year commencing November 1, 1881, is in contravention of art. 1, sec. 10, of the Constitution of the United States.

In the orderly discussion of this question, it will be proper, if not necessary, to refer to the financial legislation of South Carolina since 1876, in order to understand the position of the State with reference to her creditors.

It may not be irrelevant here to remark, since it is a matter of history, that for ten years prior to 1876 the governmental affairs of South Carolina were not administered either wisely or honestly, and that, as a natural result, her treasury was depleted, and her people burdened with debt—a large part of which was known to be invalid.

On the 8th day of June, 1877 (16 Stat., 318), the general assembly adopted a resolution, entitled "Joint resolution to raise a commission to investigate the indebtedness of the State." It recited that great uncertainty existed in the minds of the property owners and taxpayers as to the real and definite amount of the true and valid indebtedness of the State and the character of the obligations out of which the indebtedness had grown, and the equally unsatisfactory condition of the credit of the State as long as any doubt or suspicion attached to claims against her, and provided for the appointment of a commission, consisting of three members of the senate and four members of the house of representatives, to investigate and report to the general assembly upon such indebtedness.

The duty of said commission was to make a thorough investigation of the following and kindred matters, to wit:

First. The entire amount of consolidated bonds and certificates of stock that have been issued under the "act to reduce the volume of the public debt and provide for the payment of the same," approved December 22, 1873, so as to show, under proper heads and classifications, the number of the series, the letter,

date of issue, denomination, rate of interest, by whom signed and countersigned, and to whom issued. 7

Second. Whether there is in the State treasurer's office, on file as vouchers, cancelled bonds, coupons, and certificates of the issues described, issued in accordance with law, and authorized to be consolidated by the act above recited to the amount required by said act.

The commission, by section 3 of said joint resolution, were required to report if any of said bonds, certificates of stock, or coupons have been illegally or otherwise improperly issued, together with the evidence upon which the illegality or non conformity to law rests. 8

This commission, after a careful and laborious investigation, submitted their report, accompanied with schedules, one of which, called No. 6, was intended to represent the consolidation bonds and certificates affected by vouchers which, in the judgment of the bond commission, were not issued in accordance with law, and authorized to be consolidated under the "act to reduce the volume of the public debt and provide for the payment of the same."

Upon hearing this report the general assembly, in order to give to all creditors of the State ample opportunity to have their claims tested according to the rules of law, passed a "joint resolution providing a mode of ascertaining the debt of the State and of liquidating and settling the same." March 22, 1878, 16 Stat., 669. 9

This resolution provides :

1. That a special court be established, to be known as the Court of Claims, to consist of three of the Circuit Judges of this State, now in commission, which said court shall have jurisdiction to hear and determine any case or cases made up or brought to test the validity of any of the consolidated bonds, coupons, and certificates of stock, or any of the various classes of them mentioned in the report of the bond commission, as resting on vouchers not issued in accordance with law, and authorized to be consolidated by the act of the general assembly approved December 22, 1873, entitled "An act to reduce the volume of the public debt, and provide for the payment of the same," and also as not issued in accordance with law, and further designated and described in schedule 6 of the said report. 10

11 2. That there shall be the same right of appeal in every respect from the said special court to the Supreme Court of this State, as now exists from the Circuit Courts to the Supreme Court, with a right of appeal by writ of error, or otherwise, to the Supreme Court of the United States.

3. That the pleadings and practice in the cases made and suits brought in said special courts shall conform to, and be governed by, the same laws, rules, and regulations governing the Circuit Courts of this State.

12 The resolution further provides "that the attorney general and his associates, with the consent of the creditors of this State, or of so many of them as shall be necessary, may make up a case, or cases, to heard and determined in said court, in which, if practicable, the State shall be defendant, to test the validity of the said consolidated bonds and coupons and certificates of stock mentioned in said schedule 6, bringing before the court the various classes of vouchers, which, it is alleged in the report of the said commission, impair the validity of the said consolidated bonds, coupons, and certificates of stock, or any of them."

13 Sec. 12 of said resolution provides: "That the coupons and interest orders on any of the classes of consolidated bonds or certificates of stock mentioned in the said schedule 6, shall be paid out of the proceeds of the taxes for the last and the current fiscal years, respectively, whenever there shall be a *final adjudication* as to the validity of the several classes of bonds and certificates of stock *in the manner hereinbefore provided, and none other.*"

Certain of the creditors of the State, holding bonds and certificates of stock of all the classes declared by said commission to
14 be invalid and embraced in said schedule 6, brought suit before the said Court of Claims thereon to test their validity, and from the judgment of said court, which was in favor of the State, appealed to the Supreme Court of said State. These cases, known as the "bond debt cases," were heard by the said Supreme Court at the April term, 1879; and it was decreed and adjudged by said court—

First. That all the bonds issued under the "consolidation act" are valid obligations of the State of South Carolina, except as follows:

1st. Such as were issued in exchange for bonds issued under the act entitled "An act to authorize a loan for the relief of the treasury," approved February 17, 1869, or for the coupons of such bonds, the said act being repugnant to sec. 7, art. 9, of the Constitution of the State of South Carolina, in that it purports to create a debt which was not for the purpose of defraying extraordinary expenditures, and the debt sought to be created not being "for some single object," and such object not being distinctly specified therein, as required by said section and article of the constitution. 15

2d. Such as were issued in exchange for the second issue of bonds under "an act to authorize a State loan to pay interest on the public debt," and which were endorsed "issued under act approved August 26, 1868," or the coupons of such bonds, the said bonds and coupons being absolutely void, even in the hands of *bona fide* holders, because issued without any authority whatever. 16

3rd. Such as were issued in exchange for those conversion bonds which were issued in exchange for either of the bonds or coupons of the two classes mentioned.

Second. That if any consolidation bond rests wholly upon any of the three objectionable classes of bonds therein mentioned, then it is wholly void; but if it rests only in part upon such objectionable bonds or coupons, then it is void only to the extent which it does rest upon such objectionable bonds or coupons, and for the balance it is a valid obligation of the State. 17

Third. That the burden of proof is upon the State to show that any particular bond which may be brought into question does rest, either in whole or in part, upon such objectionable bonds and coupons, and if in part only, then the State must show what part is so affected. 18

No appeal was taken from this decision, either by writ of error or otherwise, and no step whatever was taken by any creditor to enforce the payment of any of said bonds or coupons from the time of the decision in said "bond cases," on September 29th, 1879, to the time of the commencement of these actions—over two years.

It having been supposed that this decision put at rest all questions in reference to the valid debt of the State, the general assembly of the State passed an act entitled "An act to provide

19 for the settlement of the consolidated debt of the State, in accordance with the decision of the Supreme Court of South Carolina, approved 23rd December, 1879," 17 Stat., 104, which together with an amendatory act, passed the following year, 17 Stat., 270, provided for the appointment of a special commissioner, whose duty it should be to eliminate from the original consolidation bonds, presented for that purpose, so much thereof as had been adjudged to be invalid, reporting his action, from time to time, to the State treasurer.

20 It was further provided by said acts that the treasurer of the State should issue to the holder of any bond or certificate of stock which was reported by said special commissioner to be in part invalid, and upon the surrender and cancellation of such bond and certificate, a new consolidation bond, of different color from those surrendered, representing the exact amount of such bond or certificate which was so reported to be valid.

A large amount of the original consolidation bonds, which were colored green and called "green bonds," were accordingly surrendered and exchanged for new consolidation bonds, colored 21 brown, and known as "brown bonds." These latter bonds represent the valid, unquestioned debt of the State, and the coupons thereof are received for taxes, or are paid on presentation at the treasury.

The object of this legislation clearly was to provide a scheme by which it could be ascertained what was the valid debt of the State.

It was not to repudiate a debt, or to impair the obligation of any contract which the State had made, but rather to determine honestly, fairly, and judicially, what obligations the State 22 was under, and to ascertain what contracts she had made.

This could be done only by an examination of the records of the office of the State treasurer, where the various reports of the special commissioner were filed. It was entirely impracticable for the county treasurers of the State to determine upon the presentation of a "green bond" what part of the valid debt of the State, if any, it represented; and, therefore, it was provided by sec. 7, of an act entitled "An act to raise supplies and make appropriations for the fiscal year, commencing Nov. 1, 1881":

"That all taxes assessed and payable under this act shall be

paid in the following kinds of funds, and no other: gold and silver coin, United States currency, national bank notes, and coupons which shall become payable during the year 1882, on the valid consolidation bonds of the State, known as the 'brown bonds.' " 23

I.

A sovereign State cannot be sued in its own courts, except by its consent. This proposition is based upon the principle of sovereignty itself, and is supported by so many adjudications as to have become common learning. Railroad Company *v.* Tennessee, 101 U. S., 337. 24

If this be admitted, as it must be, then it follows as a necessary consequent, that when the State gives its consent to be sued and at the same time prescribes the mode of proceeding, that mode, and none other, must be adopted.

The State did consent to be sued by the holders of claims of the class represented by the plaintiff in error, and at the same time, and by the same joint resolution under which such consent was given (16 S. L., 318), did prescribe the mode by which such suits should be brought and conducted. 25

"It is an established principle of jurisprudence in all civilized countries" (says the court in Beers *v.* State of Arkansas, 20 How., 529), "that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege, and permit itself to be made a defendant in a suit by individuals, or by another State. And as this permission is altogether voluntary on the part of the sovereignty, it follows that it may prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit shall be conducted, and may withraw its consent whenever it may suppose that justice to the public requires it." 26

It is true that the plaintiffs did not present their bonds and coupons for adjudication to the Court of Claims, and not being parties to the proceedings instituted in said court, they cannot be bound by the decisions thereof, upon the ground of *res adjudicata*. But, as McIver, A. J., in the decree from which this appeal is taken well says, "The true ground is that as the State cannot be sued except with its own consent, and then only in the mode

which it has seen fit to prescribe, and as the State did prescribe a mode by which it could be sued, and the validity of its debt tested upon the same principle upon which the contracts of individuals are tested, and having invited all persons having claims against it, whose claims are disputed, to come in and assert and establish their claims, one who has failed to avail himself of the opportunity thus afforded cannot afterwards, in another proceeding, not permitted by the State, maintain an action against the State, or against any of its officers for refusing to do that which the laws of the State forbid."

Again, when a State, by statute, subjects herself to suit in her own courts, and a contract is made with the State while such statute is in force, the State has the right to repeal such statute, and, thereby, to deprive the courts of jurisdiction in a suit brought against the State by its creditor to enforce such contract. Railroad Co. *v.* Tennessee, 101 U. S., 337; Railroad Co. *v.* Alabama, *Id.*, 101, 835.

By parity of reasoning, where a State agrees to receive certain evidences of indebtedness in payment of taxes, and provides a mode of enforcing such agreement by suit, or other proceeding, against its financial agents, it would seem that it is competent for the State to repeal the statute by which such suit or proceeding was authorized, and to direct her agents not to receive such evidences of indebtedness in payment of taxes, and the holders of the same would be without remedy, except by petition to the legislature.

The only exception to this rule is where the statute affording the remedy was in force at the time the indebtedness arose, so as to be a part of the contract, and in such case the repeal of the statute would not, so far as the agents of the State are concerned, deprive the creditors of the State of the remedy which they had at the time the contract was made, unless some other good and sufficient remedy has been afforded.

The statute under and by virtue of which this suit has been brought, was not in force at the time when the bonds in question were issued, and therefore is in no sense a part of the contract which the appellant attempts to set up.

The statute is still in force, but the Supreme Court of South Carolina has decided that the remedy thereby afforded was not

intended to be applied to the bonds, &c., represented by the appellant. 31

The decisions of the State Courts will be recognized and followed by this court, except where contract obligations are concerned.

II.

The remedy afforded to creditors of the State under said joint resolution, approved June 8, 1877, may be assimilated to the remedy afforded to the holders of the bills of the Bank of the State by an act of the general assembly of the State of South Carolina, entitled "An act to provide the mode of proving bills of the Bank of the State, tendered for taxes, and the rules of evidence applicable thereto," approved June 9, 1877, 16 S. L., 302. 32

This act was considered by the Supreme Court of the United States in the case of South Carolina *v.* Gaillard, 101 U. S., 437. The court said: "It does no more than provide a way of determining whether bills offered in payment of taxes are binding on the State. * * * Passed, as the act was, long after the charter was granted, and long after all the outstanding bills of the bank were issued, the State was restrained by no contract obligation 33 from taking away or changing the remedy it then gave. All the cases in this court, where the question has arisen, agree in holding that the States may change the remedy, provided no substantial right secured by the contract is impaired." It is enough if the contract is left with the same force and effect, including the substantial means of enforcement which existed when it was made. The guaranty of the constitution gives it protection to that extent. Walker *v.* Whitehead, 16 Wall., 314; Tennessee *v.* Snead, 96 U. S., 69. To the same effect is the decision of this court in the 34 case of Antoni *v.* Greenhow, 107 U. S., 769, where the court says: "It cannot be denied that, as a general rule, laws applicable to the case, which are in force at the time and place of making a contract, enter into and form a part of the contract itself, and that this embraces alike those laws which affect its validity, construction, discharge, and enforcement. *Walker* v. *Whitehead*, 16 Wall., 314. But it is equally well settled that changes in the form of action and modes of proceeding do not amount to an impairment of the obligation of a contract, if an adequate and efficacious remedy is left. This limitation upon the prohibitory clause

35 of the constitution in respect to the legislative power of the State over the obligation of contracts was suggested by C. J. Marshall, in *Sturges* v. *Crowninshield*, 4 Wheat., 122, and has been uniformly acted on since. Mason *v.* Haile, 12 Wheat., 370; Bronson *v.* Kinsie, 1 How., 311; Von Hoffman *v.* City of Quincy, 4 Wall., 535; Dreham *v.* Stifle, 8 Wall., 595; Gunn *v.* Barry, 15 Wall., 611; Walker *v.* Whitehead, 16 Wall., 314; Terry *v.* Anderson, 95 U. S., 628; Tennessee *v.* Snead, 96 U. S., 69; Louisiana *v.* Pilsbury, 105 U. S., 278.

36 III.

The act entitled "An act to facilitate the collection of taxes," approved Dec. 24, 1878, 16 Stat., 785, does not authorize the plaintiff in error to bring this suit.

By previous legislation the whole subject of the indebtedness of the State had been referred, first, to a commission instituted for the purpose of inquiring into its validity, and then a special court had been organized to test the validity by the rules of law of such claims against the State as had been reported invalid by
37 said commission.

It cannot be supposed that the legislature intended to reopen the question submitted to the special court, and before any final adjudication had been reached. Such legislation would have virtually put an end to said court, and would have nullified all that had been done at previous sessions of the legislature in reference to the subject matter. If this had been the object intended, the joint resolution of June 8th, 1877, would have been expressly repealed, or such words would have been used by the
38 legislature as would have destroyed the force and effect of said resolution, thereby effecting its repeal by necessary implication.

Besides, the phraseology of the act shows that it was intended to have no reference to a bondholder, in case his coupons were refused when tendered in payment of taxes, but was intended to afford a remedy to such persons as might tender bills of the Bank of the State in payment of taxes. The 3rd section of this act reads as follows: "That in all cases in which any person against whom any taxes stand charged upon the books of any county treasurer of the State has heretofore tendered in payment of the same any funds, currency, or bank bills, other than such as the

treasurer was authorized to receive by the act of the general 39
assembly levying said taxes, the said treasurer shall receive from such person the said taxes without penalty, in funds or moneys authorized to be received by the act of the general assembly levying the same." &c. This section certainly does not refer to the class of creditors represented by the appellant. If such had been the intention of the legislature, the words "coupons" or "interest" would also be found in said section in connection with the words "bank bills." *Expressio unius, exclusio alterius.*

But suppose this were not the case, and that the legislature 40
did intend to reopen the question submitted to the Court of Claims, and by this act to give the bondholders of the class represented by the appellant a further opportunity to test the validity of their claims by the mode adopted by the appellant. Still, this action could not be sustained, because it would be incumbent on the appellant to show that the county treasurer illegally and wrongfully refused to receive in payment of taxes assessed against him, anything else but gold and silver coin, United States currency, National Bank notes, and coupons which shall become payable during the year 1882, on the valid consolidation 41
bonds of the State, known as the "Brown bonds," as required to do by the 7th section of the act to raise supplies and make appropriations for the fiscal year commencing November 1, 1882. 17 Stat., 104.

This act did not permit county treasurers to receive the coupons tendered by the appellant in payment of taxes. They, by such refusal, only rendered obedience to the mandate of the legislature. It was entirely competent for that body to establish a court to test the validity of the indebtedness of the State, and it
must follow that until such indebtedness was established, it could 42
prohibit the payment of the tainted bonds or coupons or the reception of any part of the same in payment of taxes. If this be true, there was nothing wrongful or illegal in the treasurer of Charleston County refusing to receive in payment of taxes the coupons tendered by the appellant. This officer simply obeyed the act of the legislature passed in pursuance of the law as declared by the court of last resort of his State.

The decision of the Supreme Court of South Carolina in the "bond debt cases" was the law of the land at the time of the

43 tender and refusal of said coupons, out of which this action grew, and until reversed must remain the law. While it remains of force all officers of the State must render proper respect and obedience to any act of the legislature passed in accordance with it, and its repeal could not operate upon past acts so as to make those acts wrongful which were rightful before.

If, then, the law as it had been settled, justified the refusal of the coupons at the time of the tender, then in the event that the decision of the "bond debt cases" should be reversed, such reversal will not help the appellant, for no change in the law could
44 affect a transaction occurring before such change.

IV.

But assuming that the appellant has the right to institute this action, still we submit that he can gain nothing by this appeal.

He tendered to the treasurer of Charleston County in part payment of his taxes for the year 1882, coupons of consolidated bonds, numbers 850, 851, and 2290, which matured on the first day of January, 1882. Two of said bonds, Nos. 850 and 851,
45 the plaintiff procured from Levy and Borg, and the other, No. 2290, from the Yonkers Savings Bank, some time in the year 1878. These bonds were issued by the State treasurer to the said Levy and Borg and the Yonkers Savings Bank, respectively, under and by authority of an act of the general assembly of the State of South Carolina, approved 22d December, 1873, entitled "An act to reduce the volume of the public debt, and provide for the payment of the same."

Levy and Borg, under the terms of said act, surrendered to the State treasurer bonds and coupons enumerated therein,
46 amounting in the aggregate to $52,210, and received in exchange therefor fifty-two consolidated bonds each for $500.00, and one certificate of consolidated stock for $105.00, being fifty per cent. of the face value of the bonds and coupons so surrendered.

Among the bonds and coupons so surrendered by the said Levy and Borg, for which they received consolidation bonds, including the bonds designated by the numbers 850 and 851, were the following, viz :

Certain bonds endorsed "issued under act approved August 26, 1868," being a second issue under "an

act to authorize a State loan to pay interest on the public debt," approved August 26, 1868, amounting in the aggregate to forty-two thousand dollars, $42,000
And coupons attached to said bonds, amounting in the aggregate to five thousand six hundred and seventy dollars, 5,670

Total, $47,670

The Yonkers Savings Bank, under the terms of said act, surrendered to the State treasurer bonds and coupons of the classes enumerated therein, amounting in the aggregate to $237,530, and received in exchange therefor one hundred and eighteen consolidation bonds, each for $1,000, one consolidated bond for $500, and one certificate of consolidated stock for $265, being fifty per centum of the face value of the bonds and coupons so surrendered.

Among the bonds and coupons so surrendered by the Yonkers Savings Bank, for which it received consolidated bonds, including the bond designated by the number 2290, were the following:

Certain bonds issued under "an act to authorize a loan for the relief of the treasury," approved February 17, 1869, amounting in the aggregate to one hundred and seventy thousand dollars, $170,000
Coupons attached to said bonds amounting in the aggregate to twenty-nine thousand seven hundred and fifty dollars, 29,750
Detached coupons from bonds issued under the act last mentioned, "for the relief of the treasury," amounting to nine hundred and eighty dollars, 980

Total, $200,730

The two classes of bonds and coupons thus surrendered by the said Levy and Borg and the said Yonkers Savings Bank, respectively, and which largely constituted the basis of the consolidation bonds numbers 850, 851, and 2290, above stated, were never valid debts of the State of South Carolina; and so it was decided by the Supreme Court of the State in the "bond debt cases." 12 S. C. Rep., 200.

If this decision should be sustained, then this appeal should be

51 dismissed, because under no circumstances was it the duty of the defendant to receive in payment of taxes the coupons which were not valid debts of the State.

We submit:

1. That the vouchers upon which the consolidation bonds above mentioned were based, were not valid debts of the State.

2. That the consolidation bonds or the coupons thereon tendered by the plaintiff in payment of taxes, were of no higher obligation or of any greater validity than the securities for which they were exchanged.

52

V.

The vouchers upon which the consolidation bonds above mentioned were based were not valid debts of the State.

These vouchers, or bonds and coupons surrendered, which we claim to be invalid, were composed of two classes, viz.:

1. Bonds and coupons issued under an act entitled an "act to authorize a loan for the relief of the treasury," approved February 17, 1869; and

53 2. Bonds and coupons, purporting to be issued under an act entitled an "act to authorize a State loan to pay interest on the public debt," approved August 26, 1868.

First. As to the first class.

We submit that they were invalid, null, and void, because issued under an act which is repugnant to article 9, sec. 7, of the Constitution of the State of South Carolina. This section reads as follows: "For the purpose of defraying extraordinary expenditures the State may contract public debts; but such debts shall be authorized by law for some single object to be distinctly specified therein;" &c.

54

Upon this point the Supreme Court of South Carolina, in the "bond debt cases," 12 S. C. R., 288, says:

"This act we regard as liable to two constitutional objections:

"1st. It purports to create a debt which was not 'for the purpose of defraying extraordinary expenses;' and

"2nd. The debt therein sought to be created is not 'for some *single* object,' and such object is not specified therein, and it is therefore in violation of two of the clauses of sec. 7, art. 9, of the Constitution. As we have already seen, provision had pre-

viously been made for the redemption of the bills receivable, and 55
for the payment of the interest on the public debt then in arrear, and we are not aware of any other expenditure which the general assembly were then called upon to provide for which could properly be classed amongst extraordinary expenditures, and none such have been suggested to us. The most natural inference is that the object of this act was to raise money to meet the current demands upon the treasury, in anticipation of the collection of taxes levied for that purpose, and such demands as we have seen fall into the class of ordinary expenses, and cannot therefore be regarded as 'extraordinary expenditures.' Again, the debt which 56
this act purports to authorize cannot be said to be 'for some single object,' nor is such object 'distinctly specified therein.' Money borrowed for the 'relief of the treasury,' might and would be applied to as many different objects as there were demands upon the treasury." When the money borrowed under this act was paid into the treasury, it was subject to be drawn upon for the payment of any and all valid claims against the State. It was not intended to be recognized and set apart for any specific object, but was doubtless used and applied as other moneys raised 57
for the purpose of defraying the ordinary expenses of the State government. There was no "extraordinary expenditure" for which it was necessary to create a debt as it was proposed to be done by this act. Provision had already been made for the redemption of the "bills receivable" by act passed Aug. 26, 1868, 14 S. L., 18, for the payment of the interest then in arrear on the public debt by an act passed on the same day, 14 S. L., 19, and for funding the outstanding bills of the Bank of the State by an act passed 15th September, 1868, 14 S. L., 22. There were no other expenditures to be provided for by the legislature that 58
could fall under the class of extraordinary expenditures.

Neither the title nor the body of the act indicate the purpose for which the debt was to be created, except that it was for the relief of the treasury. Could the purpose of the legislature be more general than thus expressed? Can any one by reading this act say what the object was for which the debt was to be created? Was it for the purpose of paying the salaries of the State officers, and the expenses of the sessions of the general

59 assembly, and other current expenses, in anticipation of the collection of taxes?

We can only conjecture as to the object; we only know that it was "for the relief of the treasury." But this is not enough. The purpose of the constitutional provision was, first, "to prevent log-rolling legislation;" second, "to prevent surprise or fraud upon the legislature by means of the provisions in bills of which the titles give no intimation, and which might therefore be overlooked and carelessly and unintentionally adopted;" and third, that the people be fairly apprised through such publication of
60 legislative proceedings as is usually made, of the object, *the special object*, for which the debt was to be created, "in order that they may have the opportunity of being heard thereon by petition or otherwise, if they shall desire."

Cooley on Con. Lim., p. 143.

The provision of the constitution above cited was intended to be a check upon the legislature. The proposition that that body has the right to decide for itself what are extraordinary expenditures, is only true in a limited sense. It must decide in the first
61 instance upon this, as well as upon all other constitutional questions; but such decision is always subject to review by the courts of the State—a co-ordinate branch of the government. To hold that the legislature has the right to decide this question, and that the courts have no power to declare its act unconstitutional on the ground that the expenditures thereby intended to be provided for were not "extraordinary," would be, in effect, to hold that the legislature, in matters of finance, is omnipotent, and that it is subject to no constitutional restraint.

Second. As to the second class.

62 Bonds and coupons purporting to be issued under an act entitled "An act to authorize a State loan to pay interest on the public debt."

As to the second issue of these bonds, which have been declared to be invalid, I beg to quote at some length from the opinion of Willard, C. J., in the "bond debt cases," 12 S. C. Rep., 294:

"The first question that will be considered is, whether constitutional authority existed for the issuing of the class of bonds that have been termed the second issue of bonds to pay interest

on the public debt. The history of the transaction in question is 63
briefly as follows: An act was passed August 26th, 1868, entitled 'An act to authorize a State loan to pay interest on the public debt,' authorizing the governor 'to borrow on the credit of the State of South Carolina on coupon bonds within twelve months after the passage of this act, a sum not exceeding $1,000,000, or as much thereof as he may deem necessary to pay interest on the public debt.' It appears in evidence that bonds to the nominal amount of $1,000.000 were issued and sold under the authority of this act. It also appears that after such bonds had 64
been so issued, and, as we must assume from the evidence, had become the property of private individuals, it was urged upon the financial board, which consisted of the governor, the attorney general, and the State treasurer, that the bonds would be more salable if in a form that would not make it appear that they were intended for payment of the interest on the public debt. The financial board thereupon assumed authority to retire the outstanding issue by replacing it with bonds which had already been issued thereunder, but omitting from their face the objectionable statement that was supposed to prejudice their mar- 65
ketable quality. It appears also that bonds so issued for the sole purpose of replacing such previous issue, were never sold for original bonds, and were not, in fact, used for the purpose of replacing previous issues. The question is, whether sufficient authority existed in the financial board to create bonds of the class just named, that in the hands of a *bona fide* holder for value would constitute a valid obligation of the State.

"The first question is one of fact, namely, what was the nature of the authority that the financial board thus attempted to exercise? This must be disposed of upon the evidence in the case. 66
It is very clear that what the financial board assumed to do was to change in point of form as to an immaterial matter, so far as it affected the liability of the State, outstanding obligations of the State. It is not pretended that the board intended to create one dollar of new debt. There is not the slightest evidence that the governor, who was a member of the board, intended, or had in contemplation as a consequence of the transaction, to add to the sum that had already been borrowed under the act already

67 mentioned a single dollar, to be applied according to the purposes of that act, namely, 'to pay interest on the public debt.'

"The sole object of the transaction, as we are bound from the evidence before us to conclude, was to make an immaterial change in the form of securities evidencing outstanding obligations of the State.

"It is not competent to argue that because the action of the board appears to have resulted in the creation of new debt, that that circumstance stamps the nature of the authority attempted to be exercised. In the first place, we are bound from the evi-
68 dence to assume that there was a distinct abuse of the authority attempted to be vested in him, on the part of the financial agent, who, instead of issuing the new bonds for the exclusive purpose of retiring the first issue, as to a part of them, at least, used them for the purpose of creating a new debt. * * *

"To possess and exercise authority to bind the State by the terms of an obligation newly created, implies a delegation of authority of a very high order, and generally esteemed of so much importance and delicacy as to receive the special attention of the
69 framers of the fundamental law, and to be guarded with very careful constitutional restrictions; while to effect a change in the form by which an obligation is evidenced that does not touch its nature or extent, is, when authorized, a mere act of administrative detail.

"Let us trace these distinctions into the constitution. Section 7, article IX., provides as follows:

" 'For the purpose of defraying extraordinary expenditures, the State may contract public debts, but such debts shall be authorized by law for some single object, to be distinctly specified
70 therein, and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the general assembly, to be recorded by yeas and nays in the journal of each house, respectively, and every such law shall levy a tax annually sufficient to pay the annual interest of such debt.'

"Here is a distinct negation to the State of power to create public debts, except where that power is exercised for particular purposes, and in a particular way, and it is, of course, a negation of the authority of any agent of the State to create such

debts in a manner inconsistent with the provisions of the constitution. 71

"Section 10 of article IX. deals with the powers of evidencing existing obligations, including that of changing the forms of such evidence. It provides that no scrip, certificate, or other evidence of real indebtedness, shall be issued, except for the redemption of stock, bonds, or other evidences of debt previously issued, or for such debts as are expressly authorized in the constitution.

"In these provisions we have distinctly recognized the two classes of powers—the one capable by rightful exercise of bringing into existence a new specific obligation of the State, and the other of certifying in form a debt already existing. It is perfectly clear that the authority which the board attempted to exercise in the present case is that regulated by section 10, and not that treated of in section 7. 72

Our attention has not been called to any act authorizing the financial board, or the officers composing that board, individually, to issue any bond, certificate, or evidence of debt by way of changing the evidence of any antecedent debt of the State. After a careful examination of the acts, I am unable to find any evidence that the governor, attorney general, and the treasurer possessed legal authority to exercise any such power, or even to act as a board under the name of the 'financial board.' The only authority conferred upon them, so far as I am able to find, is contained in certain sections of acts authorizing the borrowing of money for particular objects. These powers relate exclusively to the particular cases in reference to which they were given. 14 Stat., 17, 18, 182. The only power conferred, as it regards the loan for paying interest on the public debt, is contained in the fifth section of that act, and is as follows (14 Stat., 18): 'That the bonds authorized by this act shall be sold at the highest market price, and for not less than a sum to be fixed by the governor, attorney general, and the treasurer, who are hereby authorized to appoint, under a commission signed by them, some responsible bank or banker in the city of New York, to be subject to their direction and control; and they are further authorized to pay such sums of money as may be necessary to effect the purposes of this act out of any funds of the State not otherwise 73 74

75 appropriated.' This power is not in the least analogous to that attempted to be exercised, and cannot include it.

"The only power at all analogous to that in question was conferred in the particular case of the issue of bonds to redeem the bills receivable of the State, and was confined to that object. That act (14 Stat., 17) provides 'that the bonds authorized by this act shall be sold, at the highest market price, by the financial agent of the State in the city of New York, and not less than for a sum to be fixed by the governor, attorney general, and treasurer, who shall fix the time of redemption and redeem said
76 bills receivable, at the office of the State treasurer, and they are further authorized to pay such sums of money as may be necessary to effect the purposes of this act out of any funds of the State not otherwise appropriated.' The powers here conferred on the persons who claimed to constitute the board are confined to the retirement of the bills receivable, and being thus specifically delegated, instead of supporting, contradicts the assumption that they had general powers of that nature, while the fact that no such power was conferred as regards the class of bonds in ques-
77 tion shows that it was not intended to be granted to be exercised in any form. Such powers as are claimed here nowhere appear granted, either expressly or as incidents to other powers granted.

"It will not be seriously contended that the governor, attorney general, and treasurer could, either singly or unitedly, assume to change the form of an outstanding obligation of the State, in any respect, without the authority of the legislature therefor. It is apparent that the legislature, whose authority they claimed to exercise, took the same view of this question as that just expressed, for that body passed an act entitled 'An act to provide
78 for the conversion of State securities,' March 23d, 1869 (14 Stat., 241), which covered the exercise of the very power in question, namely, that of changing the form of existing obligations. This act allows bonds to be changed into stock, and stock into bonds, but does not authorize any other change to be made in any evidence of indebtedness, and altogether ignores the existence of any authority of that description in the hands of the financial board, or the officers composing it, though two of them, the governor and the treasurer, have duties to perform under this act.

"It must be concluded that the governor, the attorney general,

and the treasurer had no such authority, collectively or individu- 79
ally, as would enable them, or either of them, to put out an obligation for the redemption of an antecedent debt or obligation of this State, or in any way to change the form in which any such debt may be evidenced.

"It is necessary to notice a view that has been strenuously urged, namely, that the action of the financial board must be referred to authority contained in the act under which the bonds in question purport to be issued, communicated to the governor, to issue as many bonds as he should at any time judge necessary, for the purpose of borrowing money sufficient to pay the interest 80
on the public debt, provided he did not overstep the limit of the amount to be borrowed, namely, $1,000,000. This proposition has already been answered in part. It is clear that if the governor had such authority, he has not attempted to exercise it. It assumes that the governor found that the preceeds of $1,000,000 of bonds was not sufficient to pay the outstanding interest on the public debt. There is not a particle of evidence that the governor ever arrived at any such conclusion, or attempted to act upon it; on the contrary, the evidence shows that the governor was 81
satisfied with the amount issued, and did not intend to give any authority to increase the sum to be borrowed beyond what was intended by the first issue. He attempted to change in certain respects the form of the security taken, but did not purpose to borrow more money. This completely disposes of the argument. But, it is apparent, the governor had no such authority.

"It is not necessary to contend that after the governor had once made up his mind that a certain sum was necessary, he could not afterwards increase that sum; but the proposition that disposes of the question is, that after he had fixed the whole amount 82
to be raised, and had actually issued it, the whole intention of the act was carried out, and the authority it conferred spent. All the act contemplated was that the governor should exercise a certain authority, based on his own judgment of the extent to which that authority should go, within a certain general limit. After he had exercised his discretion and had performed the act intended to be based upon it, what remained to accomplish the full purpose of the act?

"Possibly if an act conferring authority on a public officer, in-

83 tended to meet the case of making provision against future contingencies, should be brought in question, its purposes, when rightly understood, might give rise to the conclusion that it was intended as a continuing power. But here the matter to be ascertained by the governor was such as a sum in arithmetic would solve, and no ground is afforded for enlarging the sense of the words used by holding that it was intended that the governor should have a continuing open judgment in the matter.

"It is said that the amount that the bonds would bring on public sale was uncertain, and, therefore, the governor could not
84 know until the sale was over how much money would be derived from the proceeds for the payment of interest. But the governor knew how much money had been realized when the further sale was stopped. The completion and termination, in view of the fact that in his judgment enough money had been raised for the purpose, was an exhaustive exercise of his power under the act. Had the issue been based on the actual amount needed, it would have been otherwise; but being based on the judgment of the governor as to what was needed, his final conclusion and
85 action under it was a complete satisfaction of the purpose of the statute. The act contains no expression to signify that the act of borrowing or of issuing the bonds should be a continuous act, such as the phrase 'from time to time,' but authorizes what is described as a single act to be performed.

"It is clear that parties having no legislative authority so to do have put in circulation evidences of indebtedness on the part of the State, and the holders of these evidences claim that they cannot be questioned as to their legal validity. A clearer case of the abuse of public authority cannot be stated, nor one that defies
86 more openly all the safeguards placed by the constitution around the creation of public debts."

"It seems to us that there was no authority whatever for the second issue of bonds under this act. If there was such authority, then there was nothing to prevent a third or fourth, or any number of such issues. The proposition that there was such authority under the act, falls to the ground of its own weight; for admitting its truth for a moment, the consequences to which it leads furnishes a complete *reductio ad absurdum*."

VI.

There is no decision of the Supreme Court of South Carolina in conflict with its decision in the "bond debt cases" upon the question of the constitutionality of the "act to authorize a loan for the relief of the treasury." The case of Morton, Bliss & Co. *v.* The Comptroller General, shows no such conflict.

In the former case, the court decided that said act was repugnant to certain sections of the constitution of the State of South Carolina; while in the latter case, the court merely decided that said act was not repugnant to certain other sections of the constitution.

The case of Morton, Bliss & Co. *v.* The Comptroller General came up upon petitions for writs of *mandamus* to compel the comptroller general to give notice to the county auditors of the *per centum* of the taxable property of the State to be levied to make payment of the interest upon the bonds held by petitioners.

There were five petitions upon bonds of several classes: 1. Under act to redeem bills receivable, 26th August, 1868; 2. Act to authorize a State loan to pay interest on the public debt, 26th August, 1868; 3. Act to authorize a loan for the relief of the treasury, February 17th, 1869; 4 and 5. Acts to provide for a land commission, &c.

The only grounds of objection to the constitutionality of said "act to authorize a loan for the relief of the treasury," which were suggested to, or considered by, the court in the case of Morton, Bliss & Co. *v.* The Comptroller General, were, *first*, that the act was in violation of that clause of the constitution which required that "no law providing for the contracting of a public debt should take effect" until it shall have been passed by the vote of two-thirds of the members of each branch of the general assembly; and, *second*, the clause which declared that every such law shall levy a tax annually sufficient to pay the annual interest of such debt. The court held that the act was not repugnant to those sections of the constitution referred to by the respondent.

The language of the decision itself shows that the court did not consider itself called upon to determine the question of the constitutionality of the act *generally;* but that it was confined to the consideration of objections urged by the respondent.

91 On page 462 of said decision the court says:

"The objection of the respondent to the constitutionality of the acts in question, that they do not levy a tax annually, sufficient to pay the annual interest of the debt, is not well taken."

On page 467 the court says: "It must, therefore, be concluded that a vote of two-thirds of the members present at the time the vote was taken, satisfies the requirement of the constitution. The respondent's objections, in this respect, are not well taken."

Again, on page : "We have now considered all the objec-
92 tions urged by the respondent, involving the constitutionality of the five acts of the legislature set forth in the relator's petitions, and find that they present no just ground of objection to the validity of either of said acts."

Finally, the concluding sentence of the decision, on page 484, is as follows: "The objections interposed by respondent have been examined, and are found to afford no sufficient ground for refusing the writ. It must issue, and an order therefor must be made."

Upon this point, we have the testimony, so to speak, of Wil-
93 lard, C. J., who delivered the opinion in the case of Morton, Bliss & Co. *v.* The Comptroller General, who says, at the conclusion of his opinion in the "bond debt cases," 12 S. C., 310:

"The conclusions to which the court has arrived are not in conflict with anything decided in Morton, Bliss & Co. *v.* Comptroller General, 4 S. C., 430. The question just considered was not raised or considered in that case."

Besides, it was regular and proper for the court in that case to confine itself to the case then before the court; to consider the objections made by respondent, and only those. Because, in
94 inquiring whether a statute is constitutional, it is for those who question its validity to show that it was forbidden. People *v.* Draper, 15 N. Y., 543.

The question whether a law is void for repugnancy to the constitution is at all times a question of delicacy.

Fletcher *v.* Peck, 6 Cranch, 128.

"It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously, and with due regard to

duty and official oath, decline the responsibility. * * * Never- 95
theless, in declaring a law unconstitutional, a court must necessarily cover the same ground which has already been covered by the legislative judgment, and must indirectly overrule the decision of that co-ordinate department. The task is, therefore, a delicate one, and only to be entered upon with reluctance and hesitation." Cooley's Con. Lim., 160.

"Neither will a court, as a general rule, pass upon a constitutional question, and decide a statute to be invalid, unless a decision upon that very point becomes necessary to the determination of the cause. While the courts cannot shun the discussion of 96
constitutional questions when fairly presented, they will not go out of their way to find such topics. They will not seek to draw in such weighty matters collaterally, nor on trivial occasions. It is both proper and more respectful to a co-ordinate department to discuss constitutional questions only when that is the very *lis mota*." *Idem*, 163; *Hoover* v. *Wood*, 9 *Ind.*, 287.

This doctrine was recognized, and this rule expressed, in Boyd *v.* Alabama, 94 U. S. Rep., 645, to which McIver, A. J., makes reference, in his opinion herein, in the following language: 97

"Courts seldom undertake in any case to pass upon the validity of legislation where the question is not made by the parties. Their habit is to meet questions of that kind when they are raised, but not to anticipate them. Until then, they will construe the acts presented for consideration, define their meaning, and enforce their provisions. The fact that acts may in this way have been often before the court, is never deemed a reason for not subsequently considering their validity when that question is presented. Previous adjudications upon other points do not operate as an estoppel against the parties in new cases, nor conclude the court 98
upon the constitutionality of the acts, because that point might have been raised and determined in the first instance."

VI*b*.

The established settled construction given by the highest court of a State of the laws and constitution of that State must be deemed in all cases binding upon the courts of the Union.

Elmendorf *v.* Taylor, 10 Wheat., 153.

Pease *v.* Peck, 18 How., 595.

99 Sumner *v.* Hicks, 2 Black, 532.

Town of South Ottawa *v.* Perkins, 4 Otto, 260.

This rule has always been observed in this court in cases similar to the one at bar, except where there have been conflicting decisions of the State court in matters affecting contract obligations and rights, and then "the sound and true rule," as was said by Mr. Chief Justice Taney in Ohio Life Ins. Co. *v.* Debolt (16 How., 416), "is that if the contract when made is valid by the laws of the State, as then expounded by all the departments of its government, and administered in its courts of justice, its valid-
100 ity and obligation cannot be impaired by any subsequent act of the legislature or decision of its courts altering the construction of the law." This exception to the rule is manifestly just, because a decision construing a statute before a contract is made becomes a part of such contract, and is presumed to have been in the contemplation of the parties at the time of the accrual of their rights thereunder.

As was said by Mr. Justice Strong in Olcott *v.* Supervisors (16 Wall., 678): This court has always ruled that if a contract when
101 made was valid under the constitution and laws of a State, as they had been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the legislature or the judiciary will be regarded by this court as establishing its invalidity.

To this effect are the more recent decisions of this court: Douglass *v.* County of Pike, 101 U. S., 677; New Buffalo *v.* Iron Works, 105 U. S., 73; Taylor *v.* Ypsilanti, 105 U. S., 60; Green County *v.* Connors, 109 U. S., 294; Louisiana *v.* Pilsbury, 105 U. S., 294; Dallas *v.* McKensie, 110 U. S., 686.

102 But the case at bar, for the reasons above stated, does not come within the exception, even admitting that the decision in Morton, Bliss & Co. *v.* Comptroller General went to the extent for which the appellant contends, and, therefore, it is respectfully submitted that this court should follow the decision of the Supreme Court of South Carolina in the bond debt cases.

But let us admit, for the sake of argument, that the Supreme Court of South Carolina did decide in the case of Morton, Bliss & Co. *v.* The Comptroller General that the "act to authorize a loan for the relief of the treasury," approved February 17th,

1869, was constitutional. What would be the position of the 103
appellant in reference to the bonds issued thereunder? It is true
that where rights accrue under or by virtue of any law, they can-
not be affected by any change in the law, whether such change
be effected by statute or decision. But this doctrine cannot be
applied to the appellant's case. If the decision *supra*, upon which
the appellant relies, had been made before the bonds had been
put upon the market as commercial paper, then, assuming that
the constitutionality of the act in question had been thereby estab-
lished, no subsequent decision or statute could have so changed
the law as in any way to prejudice the substantial rights of the 104
holders of the bonds. In this case, however, the facts are that
the decision in Morton, Bliss & Co. *v.* The Comptroller General
was made in August, 1873, and the bonds above referred to were
put upon the market in 1869, long prior to the filing of said deci-
sion. So it cannot be said that the holders of the bonds surren-
dered in exchange for consolidation bonds acquired the bonds so
surrendered on the faith of the law, as it is assumed that it was
declared to be by said decision.

County of Cass *v.* Johnson, 95 U. S., 368; Douglass *v.* 105
County of Pike, 101 U. S., 687.

If this decision was made after they became holders of the
bonds, it cannot be said that the judicial construction of the stat-
ute, made after the bonds had been issued, became a part of the
contract with the State. To have this effect, such judicial con-
struction must have been given before and not after they became
such holders; for if given after they became such holders, it is
impossible that they could have in any way been influenced
thereby in investing their money in the bonds.

There is no evidence that the parties who funded these bonds 106
became the owners thereof after this decision was rendered, and
if the appellant expected to rely upon this point, the *onus* was
upon him to prove that they acquired the bonds subsequent to
the time of said decision.

It does appear, however, that the appellant acquired the cou-
pons upon which his action is based in 1878, from Levy & Borg
and the Yonkers Savings Bank, who had funded bonds under the
consolidation act, the first in May, 1875, and the other in Octo-

107 ber, 1875; and that the appellant, therefore, so acquired his bonds after the report of the bond commission had been made.

So he cannot claim the benefit of the principle contended for. He became the owner of said bonds with full notice of the report of the bond commission, by which they were declared to be invalid, and a short time before they were judicially determined to be null and void by the bond debt cases.

VII.

108 The consolidation bonds or the coupons thereon tendered for taxes, were of no higher obligation nor of any greater validity than the "vouchers" or securities for which they were exchanged.

These bonds were issued under an act entitled "An act to reduce the volume of the public debt, and provide for the payment of the same."

This act requires the State treasurer to receive from the holders willing to surrender the same various classes of certificates of stock and bonds of the State; and thereupon in exchange for and in lieu of the bonds and stocks so surrendered, to issue to said
109 holders other coupon bonds or certificates of stock as they may desire, equal in amount to fifty per centum of the face value of the bonds or certificates of stock so surrendered.

The appellant claims that this act provided for a settlement between the State and her creditors; was a composition with them; a compromise of doubtful claims.

In answer to this proposition, we submit,

First, that no such composition was intended by the act; and, second, that even if so intended, it was not within the power of the legislature by this act to make that a valid debt which was
110 void under the constitution.

In support of our first proposition we say, (1) that the act in question nowhere provides that all creditors of the State must surrender their bonds and certificates of stock before any one of them could receive in exchange for such as might be surrendered by him other coupon bonds or certificates of stock; (2) that the act does not even require any creditors to surrender all of the bonds or certificates of stock that he might hold against the State before he could surrender such as he might desire, and receive therefor new bonds or certificates of stock as therein provided;

(3) that it does not appear from said act that any of the evidences of indebtedness therein referred to were considered doubtful, but all are represented as valid, except $5,965,000 of conversion bonds, which are declared to be absolutely null and void. 111

If each creditor had the right then to act independently of all other creditors of the State in his transaction with the State; if he could surrender his bonds and stocks and receive other bonds and stocks from the State in exchange, without reference to whether other creditors would do likewise or not, we are unable to perceive how the act of one creditor could, in any way, constitute a consideration upon which the act of another creditor could be based. 112

And if a holder of the bonds and certificates of stock referred to in the act voluntarily surrendered all that he held, some of which have proved to be valid and others invalid, and has received in exchange therefor new bonds under the act, the surrender of the valid bonds could not constitute a consideration for the new bonds so far as such new bonds represented the invalid bonds so surrendered. For, as we have said, the act itself expresses no doubt as to the validity of any of these evidences of debt, and any holder had the right to surrender any one of them and to receive in lieu thereof a new bond or certificate of stock. 113

In support of our second proposition, it is only necessary to say the legislature is not the State. That body represents the people of the State, but is not invested with supreme power to make contracts for the State. Its action, especially in this respect, is limited and controlled by the constitution. Art. IX., sec. 7, and art. XVI. The consolidation act was neither passed by the constitutional majority nor submitted to a vote of the people. If, then, the evidences of indebtedness surrendered under said act were constitutionally invalid, the evidences of indebtedness issued thereunder and in exchange therefor, must likewise be constitutionally invalid. 114

What is here said in reference to the effect of the "consolidation act" applies with equal force to what is commonly called the validating act, approved March 13th, 1872, 15 Statutes, 278, as it was not passed by the requisite constitutional majority.

If the legislature could by these acts make that a valid debt of the State which was not so before, then it must follow that the

115 very body that was intended to be checked and restricted, could evade by these means, and set at naught, the mandates of the constitution, thereby breaking down the barriers that the people had set up for their protection.

That that will not be permitted to be done by indirect means which the law prohibited from being done directly, is a principle of law as well as of equity, binding alike upon individuals and upon legislatures.

VIII.

116 The consolidation act was intended to make provision only for the settlement and adjustment of the valid debt of the State which existed at the time of its passage, and under the constitution could have no other effect. The constitution of South Carolina, art. XVI., provides as follows: "To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the general assembly is hereby forbidden to create any further debt or obligation * * without first submitting the question as to the 117 creation of any such new debt * * to the people of this State at a general State election; and unless two-thirds of the qualified voters of this State voting on the question, shall be in favor of a further debt, * * none such shall be created or made."

In the bond debt cases (12 S. C., 278) the court says: "It is conceded that the consolidation act was not passed by a two-thirds vote of the members of each branch of the general assembly, and was not submitted to a vote of the people, as required by article XVI. of the constitution, adopted January 29th, 1873, where after that time the general assembly undertakes 'to create 118 any further debt or obligation' on the part of the State. It cannot, therefore, be allowed the effect of creating any further debt or obligation, and must be regarded as simply a scheme for the readjustment of the *then existing* debt. When, therefore, a question arises as to the validity of any bond which purports to have been issued under the provisions of that act, the inquiries are: 1. Was the debt for which such bond was issued a then existing debt of the State? 2. If so, was such debt amongst those provided for by the terms of the consolidation act? The answer to the first inquiry depends upon the answer to the question

whether the vouchers which were surrendered upon the issue of 119
the consolidation bonds now in question were issued by competent authority."

This is clearly the proper interpretation of the act, for if it should be so construed as to authorize the issuing of consolidation bonds for bonds which were not *then existing* debts of the State, it would be repugnant to the article of the constitution above cited, in this, that a further debt or obligation would thereby be attempted to be created.

This conclusion would not be prevented by considering the fact
that the execution of the scheme proposed by the act in question, 120
while adding to the then existing debt, at the same time so diminished the amount of the outstanding debt, that the remaining debt was less than before. If the effect was to make that a debt of the State which, except for the act, would have no validity, then thereby a further debt was attempted to be contracted, and such attempt could not be effectual except by compliance with the constitutional requirements.

IX.

But, it is respectfully submitted, that the Supreme Court of 121
the United States has no jurisdiction in the premises.

The action has for its object the establishment of the validity of certain bonds of the State of South Carolina; and it has been instituted under "an act to facilitate the collection of taxes," the plaintiff in error having tendered the coupons of said bonds in payment of the taxes due to said State.

The Supreme Court of the State, upon appeal herein, held:

1. That the question as to what is the valid debt of the State
having been decided under proceedings prescribed by the State 122
for that purpose, to which the State was a party, and this action being brought to reopen that question under "an act to facilitate the collection of taxes," could not be sustained, as said act was not intended to afford the remedy claimed by the plaintiff in error.

2. That said act affords a remedy only when the treasurer illegally and wrongfully refused to receive payment of taxes in the "funds and moneys" tendered; and that the refusal of such officer to receive coupons declared by the Supreme Court of the State to be invalid, is not an illegal and wrongful refusal.

123 3. That if the decision of said court (Bond Debt Cases, 12 S. C.,) should be reversed, the effect of such reversal could not be to make illegal the acts of an officer previously done under and by authority of an act of the legislature passed in accordance with the decision of the court of last resort of the State.

(1.)

The decision of the Supreme Court of South Carolina upon these points does not present a federal question, and will there-
124 fore be followed by this court.

"It is the established doctrine of this court that it will adopt and follow the decisions of the State court in the construction of their constitution and statutes, when that construction has been settled by the decision of its highest judicial tribunal."

Nesmith *v.* Sheldon, 7 How., 818.

"It is the peculiar province and privilege of the State courts to construe their own statutes; and it is no part of the functions of this court to review their decisions or assume jurisdiction over them on the pretence that their judgments have impaired the obli-
125 gations of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the States, and not for the correction of alleged errors committed by their judiciary."

Commercial Bank of Cincinnati *v.* Buckingham's Ex'ors.

"Where no federal question is involved, this court will follow the construction which has been uniformly given to the constitution or laws of a State by its highest court."

Fairfield *v.* County of Gallatin, 100 U. S., 47.

Randal *v.* Brigham, 7 Wall., 523.

126 "Except where the federal constitution and laws are concerned, the courts of the United States, in passing upon the constitution and statutes of a State, conform to the settled construction of them by the highest State court; and when the latter holds a pretended act of the legislature to be void, and not a law, the courts of the United States are bound to hold accordingly."

Town of South Ottawa *v.* Perkins, 94 U. S., 261.

Post *v.* Supervisors, 105 U. S., 667.

Amoskeag Bank *v.* Ottawa, 105 U. S., 667.

Township of Elmwood *v.* Marcy, 92 U. S., 294.

(2.) 127

Where the record shows that two questions are presented by the pleadings, one federal and one non-federal, and that the decision below rested on the non-federal question, this court has no jurisdiction to review the judgment.

Adams County *v.* Burlington and Mo. R. R. Co., 112 U. S., 123.

In this case the court, through the Chief Justice, said:

"The decree rested alone on the defence of estoppel, which was broad enough to control the rights of the parties without dis- 128
posing of the federal question which it was attempted to raise."

In Rector *v.* Ashley, 6 Wall., 142, the court through Mr. Justice Miller, said:

"It is conceded that one of the points decided in the Supreme Court of the State against the plaintiff in error would be a sufficient ground for the jurisdiction, if it were the only one on which the court decided the case; but it is claimed that the decree is also based on another and distinct ground over which the court has no jurisdiction, and that, therefore, we cannot examine the first point. If there is this second ground on which the decree 129
may still be supported, although the first were decided in favor of the plaintiff in error, it would be a useless labor to inquire into the correctness of the point which is of federal cognizance; because, as the ruling of the State court must be assumed to be correct on the other proposition, no reversal could follow if that proposition were sufficiently broad to sustain the decree."

In Brown *v.* Atwell, adm'r, 92 U. S., 327, the court said:

"To give this court jurisdiction over the judgment of a State court, it must appear that the decision of a federal question pre- 130
sented to that court was necessary to the determination of the cause, and that it was actually decided, or that without deciding it, the judgment as rendered could not have been given."

In Murdock *v.* City of Memphis, 20 Wall., 590, the court said:

"Two defences were interposed. * * * Either of these defences, if sustained, bars the action. The second involves a federal question, the other does not. The court in its decree sustains them both. * * * As this defence is broad enough to maintain the decree, even though the federal question involved in the other

131 defence was decided wrong, we affirm the decree without considering the other question, or expressing any opinion upon it."

In this case the question was considered of the changes made in the judiciary act of 1790 by the act of 1867, and it was held that where it appears (1) that one of the questions mentioned in the statute has been properly raised, and has been decided by the State court against the plaintiff in error, the Supreme Court has jurisdiction, (2) and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the State court, (3) and if it finds that it was rightly
132 decided, the judgment must be affirmed. (4) If it was erroneously decided, then the court must further inquire whether there is any other matter at issue adjudged by the State court sufficiently broad to maintain the judgment, notwithstanding the error in the decision of the Federal question. If this be found to be the case, the judgment will be affirmed without examination into the soundness of the decision of such other matter at issue. S. C., p. 633, *et sequitur*.

In Chonteau *v.* Gibson, 111 U. S., 201, the court said:

"The legal effect of the judgment set up in bar is a question of
133 general law as to which the decision of the State court is not reviewable here. The federal questions, if any there were in the case, lay behind this defence, and could not be reached until it was out of the way."

To the same effect are numerous other decisions of the Supreme Court of the United States, among which are the following:

Moore *v.* Mississippi, 21 Wall., 636.
Bolling *v.* Leesner, 1 Otto, 594.
134 Detroit Railway Co. *v.* Guthard, 114 U. S., 134.
Otis *v.* Oregon Steamship Co., 116 U. S., 548.
Jacks *v.* Helena, 115 U. S., 288.
Jenkins, assignee, *v.* Loewenthal, 110 U. S., 222.

For the foregoing reasons we submit that the appeal should be dismissed.

JOS. H. EARLE,
Attorney General of South Carolina,
for Defendant in Error.

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APPENDIX.

EXTRACTS FROM CONSTITUTION.

ART. 9.

SECTION 7. For the purpose of defraying extraordinary expenditures, the State may contract public debts; but such debts shall be authorized by law for some single object, to be distinctly specified therein; and no such law shall take effect until it shall have been passed by the vote of two-thirds of the members of each branch of the general assembly, to be recorded by yeas and nays on the journals of each house respectively; and every such law shall levy a tax annually sufficient to pay the annual interest of such debt.

AMENDMENT TO CONSTITUTION.

ART. 16.

ARTICLE XVI. To the end that the public debt of South Carolina may not hereafter be increased, without the due consideration and free consent of the people of the State, the general assembly is hereby forbidden to create any further debt or obligation, either by the loan of the credit of the State, by guaranty, endorsement, or otherwise, except for the ordinary and current business of the State, without first submitting the question, as to the creation of any such new debt, guaranty, endorsement, or loan of its credit, to the people of this State at a general State election; and unless two-thirds of the qualified voters of this State, voting on the question, shall be in favor of a further debt, guaranty, endorsement, or loan of its credit, none such shall be created or made.

AN ACT

To Authorize a State Loan to Pay Interest on the Public Debt.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That the governor of the State be, and he is hereby, authorized to borrow,

139 on the credit of the State of South Carolina, on coupon bonds, within twelve months from the passage of this act, a sum not exceeding one million dollars, or as much thereof as he may deem necessary, to pay interest on the public debt; the first payment of said interest is to be made on or before the first day of July, A. D. 1869; said bonds to bear interest at six per cent., payable semi-annually, and redeemable within twenty years from the passage of this act.

SEC. 2. That the bonds and coupons of said loan shall be paid in the city of New York.

140 SEC. 3. That the bonds issued under the provisions of this act shall be signed by the governor and countersigned by the State treasurer; and all such obligations shall be under the seal of the State. The coupons shall be signed by the State treasurer, or executed in such manner as may be designated by the governor.

SEC. 4. That the faith, credit, and funds of the State of South Carolina are hereby solemnly pledged for the punctual payment of the interest and redemption of the principal of the loan authorized by this act.

141 SEC. 5. That the bonds authorized by this act shall be sold at the highest market price, and for not less than a sum to be fixed by the governor, attorney general, and the treasurer, who are hereby authorized to appoint, under a commission signed by them, some responsible bank or banker in the city of New York, to act as financial agent of the State, to be subject to their direction and control; and they are further authorized to pay such sums of money as may be necessary to effect the purposes of this act out of any funds of the State not otherwise appropriated: *Provided*, That the expenses of such financial agency shall not exceed the

142 rates paid by other States for like services.

SEC. 6. That an annual tax, in addition to all other taxes, shall be levied upon the property of the State, sufficient to pay the interest on the loan hereinbefore authorized, at the times when such interest shall fall due.

In the Senate House, the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and sixty-eight.

L. BOOZER, President of the Senate.

FRANKLIN J. MOSES, JR.,
Speaker House of Representatives.

Approved: ROBERT K. SCOTT, Governor. 143

(A. A. 1868, p. 18.)

AN ACT

To Authorize a Loan for the Relief of the Treasury.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That the 144
authority be, and is hereby, given to borrow, in accordance with the provisions of section 5 of this act, on the credit of the State of South Carolina, on coupon bonds, within twelve months from the passage of this act, a sum not exceeding one million of dollars, or as much thereof as may be deemed necessary, for the relief of the treasury of the State; said bonds to date from the 1st of January, 1869, and to bear interest at seven per cent., payable semi-annually, and redeemable at any time, at the option of the State, within twenty years from the date of said bonds.

SEC. 2. That the bonds and coupons of the said loan shall be 145
paid at the financial agency of the State, in the city of New York.

SEC. 3. That the bonds issued under the provisions of this act shall be signed by the governor, and countersigned by the State treasurer; and all such obligations shall be under the seal of the State. The coupons shall be signed by the State treasurer.

SEC. 4. That the faith, credit, and funds of the State of South Carolina are hereby solemnly pledged for the punctual payment of the interest and the redemption of the principal of the loan authorized by this act.

SEC. 5. That, to carry out the intent of section 1 of this act, 146
said bonds may be used as collateral security for loans by the financial agent of the State, in the city of New York, in accordance with the directions of the governor, attorney general, comptroller general, and treasurer of this State, who may also authorize the said financial agent to sell said bonds at the highest market price, but not less than for a sum to be fixed by them; and they are further authorized to pay such sums of money as may be necessary to effect the purposes of this act out of any funds of the State not otherwise appropriated.

147 SEC. 6. That an annual tax, in addition to all other taxes, shall be levied upon the property of the State sufficient to pay the interest on the loan hereinbefore authorized at the times when such interest shall fall due.

Approved February 17, 1869.

(A. A. 1869, p. 182.)

JOINT RESOLUTION

148 To Raise a Commission to Investigate the Indebtedness of the State.

In view of the great uncertainty that exists in the minds of the property owners and tax-paying portion of our people as to the real and definite amount of the true and valid indebtedness of the State and the character of the obligations out ofwhich the indebtedness has grown, and of the equally unsatisfactory condition of the credit of the State as long as any doubt or suspicion attaches to claims held against her; and in order to give reasonable assur-
149 ance to the honest creditor, on the one hand, that the State intends to faithfully meet her obligations at as early a date as practicable, and, on the other hand, to satisfy the taxpayer that the general assembly will have proceeded intelligently in whatever steps may be taken to adjust and provide for the public debt; therefore,

SECTION 1. *Be it resolved* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That, in
150 accordance with that portion of his excellency's message touching this subject, a commission, to consist of three members of the Senate and four members of the House of Representatives, shall be elected by each house respectively.

SEC. 2. It shall be the duty of said commission to make a complete and thorough investigation of the following and kindred matters, to wit: First, the entire amount of consolidated bonds and certificates of stock that have been issued under the act to reduce the volume of the public debt and provide for the payment of the same, approved December 22, 1873, so as to show, under proper heads and classifications, the number in the series, the let-

ter, date of issue, date of redemption, denomination, rate of interest, by whom signed and countersigned, and to whom issued. Second, whether there is in the State treasurer's office on file, as 151
vouchers, cancelled bonds, coupons, and certificates of stocks of the issues described, issued in accordanee with law and authorized to be consolidated by the act above recited to the amount required by said act.

SEC. 3. Should it appear to the commission, in the course of the investigation, that any of said bonds, certificates of stock, or coupons have been illegally or otherwise improperly issued, it shall report the same, together with the evidence upon which the illegality or non-conformity to law rests. 152

SEC. 4. The commission is hereby authorized to require the holders of said bonds, coupons, and stock to produce the same for inspection before the commission in Columbia. Such as shall be found to have been issued according to law and that are valid *bona fide* bonds, coupons, and stocks shall be registered by their number, letter, denomination, and such other distinctive titles as may be best suited to the object in view, and shall be certified as correct in such form as the commission may deem proper.

SEC. 5. The commission shall have full power and authority to send for persons and papers, and to administer oaths; and false 153
swearing by or before said commission shall be indictable and punishable as perjury.

SEC. 6. The comptroller general and treasurer are hereby authorized and required to co-operate with said commission when called upon.

SEC. 7. The commission shall be authorized to sit during the recess of the general assembly.

SEC. 8. The compensation of the commission shall be a per diem of five dollars each. 154

SEC. 9. It shall also be the duty of said commission to investigate the amount and character of the floating indebtedness of the State and make a report thereon in detail.

SEC. 10. That said commission shall have power to report any special matter.

SEC. 11. That before said commission shall enter upon its duties, each of the commissioners shall first take and subscribe the following oath, to wit: "I solemnly swear that I am not now,

155 nor was I at the date of my appointment as commissioner, directly or indirectly interested in any bonds or other evidence of State indebtedness to come before me as commissioner; nor am I, or will I become, the attorney or legal representative of any party interested in any such bonds or evidence of indebtedness; and, further, that I will honestly, fairly, and to the best of my ability perform the duties of commissioner as required by the joint resolution under which I was appointed: So help me God."

SEC. 12. That said commission shall make a report to the general assembly at the next regular session, during the first week
156 of said session.

Approved June 8, 1877.

(A. A., 1877, p. 318.)

JOINT RESOLUTION

Providing a Mode of Ascertaining the Debt of the State, and of Liquidating and Settling the same.

157 SECTION 1. *Be it resolved* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That a special court, to be known as the Court of Claims, be, and the same is hereby, established, to consist of three of the Circuit Judges of this State now in commission, who shall be selected by the joint vote of the general assembly, any two of whom shall constitute a quorum, which said court shall have jurisdiction to hear and determine any case or cases made up or brought to test the validity
158 of any of the consolidated bonds, coupons, and certificates of stock, or of any of the various classes of them, mentioned in the said report of the bond commission as resting on vouchers not issued in accordance with law and authorized to be consolidated by the act of the general assembly, approved December 22, 1873, entitled "An act to reduce the volume of the public debt and provide for the payment of the same," and also as not issued in accordance with law, and further designated and described in schedule 6 of the said report.

SEC. 2. That there shall be the same right of appeal in every respect from the said special court to the Supreme Court of this

State as now exists from the Circuit Courts to the Supreme 159
Court, to be in accordance with and be governed by the same rules and regulations now existing in appeals from the said Circuit Courts to the Supreme Court, with a right of appeal, by writ of error, or otherwise, as provided by law, to the Supreme Court of the United States.

SEC. 3. That the pleadings and practice in the cases made and suits brought in said special court shall conform to and be governed by the same laws, rules, and regulations governing the Circuit Courts of this State.

SEC. 4. That the said special court shall have the same right 160
to enter judgment, issue execution, punish for contempt, and enforce its mandates as is now possessed by the Circuit Courts of this State.

SEC. 5. That said court shall have the power to appoint their own clerk and a marshal, who shall have all the powers of a sheriff under the laws of this State.

SEC. 6. That the said special court shall convene in the city of Columbia on the first Monday in May next, and shall hold its sessions at such times as the said court shall determine, with full 161
power to adjourn from time to time, as to the said court may seem proper.

SEC. 7. That in case of the death, resignation, or inability from any cause to serve on said court of any one or more of the judges selected as aforesaid, the governor of the State, upon the recommendation of the court, shall appoint from among the other Circuit Judges in commission, one or more judges in lieu and stead of the judge or judges that have so died, resigned, or be disabled to serve.

SEC. 8. That the State shall be represented in the said special 162
court by the attorney general and two associate counsel, learned in the law, to be selected by the joint vote of the general assembly; and in the preparation, conduct, and management of the said cases and suits made, brought, or defended, or any of them, and in determining the propriety and conduct of appeals from any of the decisions, decrees, or orders of the said court, the opinion of the attorney general and his associates, or a majority of them, shall control.

SEC. 9. That the attorney general and his said associates, with

163 the consent of the creditors of this State, or so many of them as shall be necessary, may make up a case or cases to be heard and determined in said court, in which, if practicable, the State shall be defendant, to test the validity of the said consolidated bonds and coupons and certificates of stock mentioned in said schedule 6, bringing before the court the various classes of vouchers which, it is alleged in the report of the said commission, impair the validity of the said consolidated bonds, coupons, and certificates of stock, or any of them.

164 SEC. 10. That there shall be levied for the current fiscal year a tax sufficient to pay the coupons and interest orders maturing on the outstanding consolidation bonds and certificates of stock during the said fiscal year.

SEC. 11. That the coupons and interest orders on the consolidated bonds and certificates of stock mentioned in schedule 5 of the said report be paid by the State treasurer on presentation—those for the last fiscal year out of the money now in the treasury for that purpose, and those for the current fiscal year out of the proceeds of the tax to be levied for that purpose, when so 165 levied and collected.

SEC. 12. That the coupons and interest orders on any of the several classes of consolidation bonds or certificates of stock mentioned in the said schedule 6 shall be paid out of the proceeds of the taxes for the last and the current fiscal years, respectively, whenever there shall be a final adjudication as to the validity of the said several classes of bonds and certificates of stock in favor of said bonds and certificates of stock in the manner hereinbefore provided, and none other.

SEC. 13. That the State treasurer is hereby authorized and 166 required to receive, from the holders willing to surrender the same, all outstanding bonds and certificates of stock of the State issued prior to January 1, 1866, and of coupons on said bonds and interest orders upon the interest on said certificates of stock, and shall, thereupon, in exchange therefor, issue to said holders other coupon bonds and certificates of stock at fifty per centum of the face value thereof in all respects as is provided for in the act of the general assembly, approved 22d of December, 1873, entitled "An act to reduce the volume of the public debt and provide for the payment of the same:" *Provided*, That the privilege of the

holders of said bonds, certificates of stock, coupons, and interest 167
orders to surrender the same and receive other bonds and certificates of stock in exchange therefor and in lieu thereof shall cease and determine on the first day of November, 1878.

SEC. 14. That all persons holding bonds or coupons of bonds, certificates of stock, or interest orders thereon, issued by this State since the first day of January, 1866, before they can be entitled to the benefits of the act of the general assembly, approved 22d December, 1873, entitled "An act to reduce the volume of the public debt and to provide for the payment of the same," shall present the same for examination before the person or persons 168
appointed to examine the debts, liabilities, and unfunded debt of the State, and for such of said bonds, coupons, certificates of stock, interest orders, or any of them not belonging to any class reported by said commission as invalid, as the person or persons so examining the same shall direct, the State treasurer shall issue consolidation bonds or certificates of stock at the rate and in the mode provided in said act.

SEC. 15. That the bonds and certificates of stock and exchange and transfer certificates of stock mentioned in said report as is- 169
sued by F. L. Cardozo as State Treasurer, the same being signed by D. H. Chamberlain as governor, and countersigned by Thomas C. Dunn as comptroller general, after the terms of these officials had expired, amounting in the whole to fifty-four thousand six hundred dollars ($54,600), be, and the same are hereby, declared to be in all respects as if the same had been issued before the expiration of the said terms of office of said officials, and the validity thereof shall be determined in the same manner as is hereinbefore provided for determining the validity of bonds and certificates of stock mentioned in schedule 6 of said report. 170

SEC. 16. That all the unfunded debts and liabilities of the State accruing before the first day of November, 1876, including herein the bills of the Bank of the State, and so much of the funded debt as is known as the "Little Bonanza," and the liability of the State by guarantee of the Spartanburg and Union Railroad bonds, the balance due them by judgment of the court, after applying the proceeds of the sale of said road, amounting to four hundred and seventy-four thousand six hundred dollars, be settled, after proper proof and examination, in such mode as the

general assembly shall determine, at the rate of fifty per centum, payable in coupon bonds bearing interest at the rate of six per centum per annum, payable semi-annually, the principal payable in ten years, in full satisfaction of said demands, except that advances made in money, supplies, and labor for the lunatic asylum, deaf and dumb asylum, and State penitentiary shall be paid in the amount actually found to be due after proof and proper examination thereof, the said payment to be made in coupon bonds of like character to those hereinbefore mentioned, for the full amount allowed after said examination: *Provided*, That in all cases in which the amount allowed shall be less than one hundred dollars the said sum shall be paid in cash.

Approved March 22, 1878.

(A. A., 1878, p. 669.)

AN ACT

To Provide for the Settlement of the Consolidated Debt of the State in Accordance with the Decision of the Supreme Court of South Carolina.

Whereas under the provisions of the joint resolution, approved 22d March, 1878, entitled "A joint resolution providing a mode of ascertaining the debt of the State and of liquidating and settling the same," cases were duly made up and brought in the Court of Claims established by said joint resolution, which cases were brought to test the validity of portions of the consolidated bonds and stocks of the State in accordance with the provisions of said joint resolution; and whereas said cases were heard and passed upon by said Court of Claims, the State being duly represented; and whereas an appeal was taken in said cases to the Supreme Court of the State and a final decision therein rendered; and whereas it is to the interest of the State and her creditors that the principles established in the said decision of the Supreme Court should be accepted as final and forthwith applied in the elimination from the consolidated debt of the State of all invalid material; therefore,

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting

in General Assembly, and by the authority of the same, That 175
the Hon. James C. Coit be, and he is hereby, appointed and created a special commissioner, whose duty it shall be, and who is hereby authorized and directed, to ascertain and establish the exact percentage and amount of the invalidity of each and every consolidated bond and certificate of stock of the State consolidated debt and of the interest thereon in accordance with the principles laid down in the decision of the Supreme Court of this State made in the cases entitled "G. M. Walker, cashier, appellant, against the State of South Carolina, respondent," "F. J. Pelzer, appellant, against *idem*, respondent," and the remaining 176
cases heard and decided with the above named cases.

SEC. 2. That the said special commissioner shall forthwith enter upon the discharge of the duty required of him in the first section hereof; and he shall, at least once in each month during the period of said ascertainment and investigation, make a detailed report to the State treasurer, setting forth therein by their numbers the consolidated bonds, coupons, certificates of stock, and interest orders investigated by him during the previous month; also whether the same, under the decision of the Su- 177
preme Court aforesaid, be wholly valid or only partially valid, and where only partially valid in each case he shall also set forth the exact percentage, amount, and character of the invalidity. That he shall continue to make such detailed reports to the State treasurer until he shall have investigated and reported upon the entire consolidated debt of the State.

SEC. 3. That the said special commissioner shall proceed with the said investigation and make his said reports in the following order: First. The consolidated bonds, stocks, and the interest thereon which may have been pronounced valid by the Court of 178
Claims aforesaid. Second. The consolidated bonds, stocks, and the interest thereon embraced in schedule five of the report of the commission to investigate the indebtedness of the State created under the joint resolution approved 8th June, 1877. Third. The consolidated bonds and stocks, with the interest thereon, issued since 8th June, 1877. Fourth. The consolidated bonds and stocks, with the interest thereon, embraced in schedule six of the report of the said commission to investigate the indebtedness of the State, created under the joint resolution approved 8th

179 June, 1877. And, lastly, all other consolidated bonds and stocks, with the interest thereon, which may be outstanding and not hereinbefore enumerated.

SEC. 4. That in each and every case where the said special commissioner shall find any bond or certificate of stock partially invalid, he shall calculate and ascertain the exact amount of unpaid interest which had matured up to 1st July, 1878, on the valid portion of each of such bonds and certificates of stock so found partially invalid, and the amount of such unpaid interest shall also be specified in the said report in reference to such
180 bonds and stocks directed to be made by him in section 2 hereof.

SEC. 5. That every holder of any bond or certificate of stock, or of the interest thereon, which may be reported by the said special commissioner as partially invalid, shall have the right to surrender to the State treasurer for cancellation such bond or certificate of stock and the interest thereon (whether such interest be in the form of a coupon or of an interest order); and upon such surrender and cancellation he shall be entitled to receive from the State treasurer, who is hereby authorized and required
181 to issue the same, a new bond or certificate of stock equal in amount to the exact amount of the valid portion of such bond or certificate of stock, or coupon or interest order: *Provided*, Said coupon or interest order shall have matured on or before July 1st, 1878, as reported by the said special commissioner, such new bond or certificate of stock to be of the same class and character and to have the same rights and privileges as those surrendered, or as do those to which belonged the coupons and interest orders surrendered, as herein provided for, that is to say, such new bonds and certificates of stock to be in all respects similar and of
182 like validity to and having the same benefits and privileges as those provided for in the act, approved December 22d, 1873, entitled "An act to reduce the volume of the public debt and provide for the payment of the same," saving and except that the first coupon or interest to mature thereon shall mature on the 1st January, 1879.

SEC. 6. That every holder of any detached coupons or interest orders which may be reported by the said special commissioner as partially invalid shall have the right to surrender to the State treasurer for cancellation such detached coupons or interest orders,

and for so much of the same as may have matured on or before 183
the 1st July, 1878, the said holder shall be entitled to receive from the State treasurer, who is hereby authorized and required to issue the same, a new bond or certificate of stock equal in amount to the exact amount of valid portion of such detached coupons or interest orders, as reported by the said special commissioner, such new bond or certificate of stock to be of the same class and character, and to have the same rights and privileges as do the bonds and stocks authorized to be issued under the act, approved 22d December. 1873, entitled "An act to reduce the
volume of the public debt and provide for the payment of the 184
same," saving and except that the first coupon or interest to mature thereon shall mature on the 1st day of January, 1879: *Provided*, That no coupon or interest shall be allowed or paid in any case where interest shall have already been paid for the same period on original bonds and stocks surrendered for cancellation as aforesaid.

SEC. 7. That the interest due and unpaid on 1st July, 1878, and prior thereto, on the valid portion of the bonds and stocks which may be reported as aforesaid partially invalid, and on the 185
bonds and stocks which may be reported as aforesaid wholly valid, shall be funded in new bonds or certificates of stock of the same class and character in all respects as those provided for in section 6 hereof for the funding of detached coupons and interest orders.

SEC. 8. That the bonds and stocks reported by the special commissioner as valid, and the portions of the bonds and stocks also reported by him as valid, but exchanged by their holders, as hereinbefore provided in section 5 hereof, for new consolidation bonds or stocks, are hereby declared to be valid and unquestioned obligations of this State. 186

SEC. 9. That the office of special commissioner hereinbefore created shall cease and determine on the 31st October, 1880; and the said special commissioner shall receive for his services in this matter a salary at the rate of two thousand five hundred dollars per annum, payable monthly during the term of his office. He shall also be paid in the same manner and at the same time the sum of eighteen hundred dollars for clerk hire, and the sum of two hundred dollars for books and contingent expenses, if so much be necessary.

187 SEC. 10. That in the event of a vacancy occurring in the said office of special commissioner by death, resignation, or from any other cause, the governor of the State is hereby authorized and directed to fill said vacancy.

Approved December 23, 1879

(A. A. 1879, 17 Stat., 104.)

AN ACT

188 To Amend an Act Entitled "An Act to Provide for the Settlement of the Consolidated Debt of the State in accordance with the Decision of the Supreme Court of South Carolina," Approved December 23, 1879.

SECTION 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That an act entitled "An act to provide for the settlement of the consolidated debt of the State in accordance with the decision of the
189 Supreme Court of South Carolina," approved December 23, 1879, be, and the same is hereby, amended as follows: Strike out from section second of said act the word "coupons" and insert in lieu thereof the word "and"; strike out from said section the words "and interest orders."

SEC. 2. Add to the third section of said act the following: "*Provided*, That nothing herein contained shall be construed to prevent the said special commissioner from reporting upon any bond or certificate of stock out of its order, as hereinbefore pre-
190 scribed, and along with any other class, if the validity or invalidity of the said bond or certificate of stock has been ascertained in his investigation of those of a prior class."

SEC. 3. Strike out the whole of section four of said act.

SEC. 4. Insert after the words "interest thereon," where they first occur in section 5 of said act, the words "whether said interest be attached or detached;" strike out from section five of said act the words "as reported by the said special commissioner," where they occur immediately following the figures "1878" in said section.

SEC. 5. Insert after the words "interest orders," where they

first occur in section six of said act, the words "which have matured upon bonds or certificates of stock." 191

SEC. 6. Strike out from section nine of said act, where they occur, the words "at the rate" and the words "per annum."

SEC. 7. Change the numbers of sections 5, 6, 7, 8, 9, and 10 to numbers 4, 5, 6, 7, 8, and 9 respectively.

SEC. 8. Add the following to said act as section 10 thereof: "That in the issue of new bonds and certificates of stock in exchange for those surrendered, as provided for in the act to which this is an amendment, the State treasurer shall issue bonds and certificates of stock different in appearance as respects color from 192 the bonds and certificates of stock surrendered, and which shall be numbered (the bonds in each denomination) consecutively from No. 1 as a new series. That the holders of the bonds and certificates of stock found wholly valid by the said special commissioner, and the holders of all other valid consolidated bonds and certificates of stock of this State, shall have the right to surrender the same to the State treasurer, who is hereby authorized and required to issue to such holders, in lieu of and in exchange for the bonds and certificates of stock so surrendered, other bonds and 193 certificates of stock of the same amount and tenor, maturing at the same time and bearing the same rate of interest as the bonds and certificates of stock surrendered as aforesaid, and being of the same description and class, and numbered after the same manner, as the new bonds and certificates of stock directed to be issued in the first clause of this section. That all consolidated bonds and certificates of stock of this State which may at any time hereafter be issued under any law now of force shall be of the same color, class, and character, and shall be numbered in like manner as the bonds and certificates of stock whose issue is 194 hereinbefore provided for. That all bonds and certificates of stock which may be surrendered to the State treasurer under the provisions of this act, and of the act of which it is an amendment, shall be cancelled and filed in the office of the State treasurer."

SEC. 9. That the sum of $300, if so much be necessary, be, and the same is hereby, appropriated to pay the contingent expenses which may be incurred by the special commissioner created under the act approved 24th December, 1879, and entitled

195 "An act to continue in force an act to extend the time for funding the unquestionable debt of the State." The said amount to be paid on the warrants of comptroller general on the application of said special commissioner.

SEC. 10. That in the discharge of the duties required under this act, and when he may deem it necessary in the determination of the validity or invalidity of the bonds and certificates of stock, the special commissioner shall have authority to send for persons and papers and to examine the records and vouchers pertaining thereto.

196 SEC. 11. That the expenses which may be incurred by the State treasurer in the issue of bonds and stocks hereinbefore provided for shall be paid out of the appropriation made "to defray the expenses of completing the consolidation of the bonded debt" in section 4 of an act entitled "An act to make appropriations for the payment of the per diem, mileage, and stationery certificates of the members of the general assembly," approved December 24, 1879.

Approved February 19, 1880.

(A. A. 1880, 17 Stat., 240.)

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